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H. Hawes & Son, N.Y.

*Horace Hawes*

# REPORT

OF THE

COMMISSIONERS OF THE

LAND OFFICE

IN RESPONSE TO A

RESOLUTION OF THE

HOUSE OF REPRESENTATIVES

PASSED MAY 10, 1871

WASHINGTON

GOVERNMENT PRINTING OFFICE

PUBLISHERS, BOOKSELLERS AND STATIONERS.

1872.





11/11/11

REPORT  
OF THE  
PROCEEDINGS AND ARGUMENTS

IN THE PROBATE COURT OF THE CITY AND COUNTY OF SAN  
FRANCISCO, STATE OF CALIFORNIA,

ON THE TRIAL TO ADMIT TO PROBATE

THE

“LAST WILL AND TESTAMENT”

OF

HORACE HAWES, (DECEASED.)

---

BY J. C. BATES,  
*One of the Counsel for Contestant.*

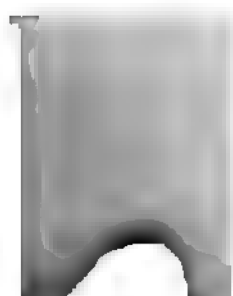
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From the Short-Hand Report of Messrs. Marsh & Osborne.

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San Francisco:  
A. L. BANCROFT AND COMPANY,  
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1872.



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## PREFACE.

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The interest manifested by the public and the legal profession, as well abroad as in the State of California, has induced us to present in a convenient and permanent shape, the proceedings and evidence had and taken on the trial of the Contestation of the alleged will of the late Horace Hawes. The work of preparing the testimony on the part of the contestant was exclusively entrusted to J. C. Bates, but that actually offered and admitted on the hearing of the cause formed but a small portion of that which was at hand for use. The proceedings, and the conduct of the cause during the trial, were mainly in the hands of W. H. L. Barnes. There have been few causes in the judicial history of California in which the result has been so generally approved by public opinion.

J. C. BATES.

W. H. L. BARNES.

SAN FRANCISCO, Feb. 6th, 1872.

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## NOTE.

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In preparing this work for publication, care has been taken to let those who are curious enough to read or refer to the same, have just what it purports to be—the proceedings as they actually took place at the trial. I have not even attempted to correct the grammatical errors of witnesses. The lengthy and able argument of my associate, in reference to the burden of proof, was necessarily omitted, and also the elaborate argument of Judge Pratt, in reply.

J. C. BATES.

SAN FRANCISCO, February, 1872.





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## THE CONTESTED WILL.

---

I, Horace Hawes, of the City and County of San Francisco, State of California, United States of America, do make and ordain this my last will and testament in solemn form, and I do hereby revoke and annul all other wills, codicils or testamentary dispositions by me executed or made prior to the date thereof:

### THE MONT EAGLE ENDOWMENT.

*First*—I ratify and confirm in all its parts the deed of conveyance and foundation bearing date October 31st, A. D. 1870, by me made to Albert Dibblee and others, Mission block No. 44, situated in the City and County of San Francisco, State of California, in trust for the establishment and maintenance of the institution to be called by the name of the Chamber of Industry.

*Second*—I also hereby ratify and confirm in all its parts the deed of conveyance and foundation bearing date the 24th of February, 1871, by me made to Horatio Stebbins and others, of my Redwood farm and certain property situated in the City and County of San Francisco aforesaid, in trust for the establishment and maintenance of an institution of learning and science, to be called Mont Eagle University. And it is my will that the said two deeds, and the grant, conveyance and disposition of the property contained and expressed in each of them in manner and form, upon the trusts and in all things according to the conditions, limitations, restrictions and provisions therein respectively expressed, shall and do remain firm and stable forever.

### PROVISION FOR HIS FAMILY.

And whereas, in and by the deed secondly above mentioned, being the deed for the foundation of Mont Eagle University, certain lands are therein granted and conveyed, and by the terms of said deed, grant and conveyance, there is and remains reserved to me the power, by my last will and testament, to subject all or any part or parcel of the said lands and property to the payment of any annuity, charge, sum or sums of money, to be paid out of the annual rents, issues and profits, or net income thereof, in such amounts, at such times, and to such person or persons as I (the grantor of said property in said deed named), in my last will and testament may designate, or otherwise by such will to devise or dispose of all or any part or parcel of said land and property.

Therefore, in exercise of the power so reserved, I do by this, my last will and testament, order and direct that the lots and land granted and conveyed in the aforesaid deed, for the foundation of Mont Eagle University, except Eagle Hill lot—designated as “University Grounds”—be subjected to and charged and encumbered with the payments mentioned and specified in the five clauses hereinafter next following.



and numbered one, two, three, four and five, to be reserved and paid out of the annual rents, issues and profits, and net annual income of the said lots and lands, and not otherwise named.

*One*—To my wife Caroline, \$2,500 per annum, to be paid yearly, quarterly, or monthly, as she may elect, to commence at the date of my decease and continue for and during her natural life.

*Two*—To my son Horace, \$3,600 per annum, to commence when he shall arrive at the age of twenty-one years and continue for and during his natural life.

*Three*—To my daughter Caroline, \$1,200 per annum, to commence at the date of decease and continue until she shall arrive at the age of twenty years, and thereafter \$3,000 per annum, to continue for and during the period of her natural life. The payments to my said son and daughter to be yearly, quarterly, or monthly, as may be most convenient to them. The annuities granted to my wife, son and daughter are upon condition, and with the qualification, that neither such annuity, nor any part of it, or any interest therein, is to be transferable, alienable, or in any manner liable, to be pledged or incumbered.

*Four*—To Mrs. Mary Hawes, widow of my deceased friend, Rev. Lawrence Hawes, \$6,000, to be paid in instalments of \$1,000 per annum.

*Five*—Six thousand dollars to be paid into the hands of my friend and relation, Henry Ullman, Banker, resident in Racine, Wisconsin, in trust, to be by him distributed and paid out at his sole discretion for the assistance and relief of my brothers John and Isaac, and my aged aunt Mrs. Polly Cutter, my father's sister, and other aged near relations, if any there be to his knowledge who need it.

I give and bequeath to my sister Lydia, wife of Russell Martin, to her separate use and control, independent of her husband, all the property I have in Buffalo, including a lot of land standing on record in my name, and money secured by a mortgage executed by French & Gorton. All that belongs to me in Buffalo, money, land and security, are her's.

To my son Horace, I also give and bequeath my private library, books, and all my personal property not otherwise disposed of.

Also to my son Horace, I give, devise and bequeath all my interest, being one undivided tenth part thereof, in the tract of land situated in the County of Monterey, State of California, aforesaid, known by the name of Rancho de Las Aromas y Agua Caliente, to have and to hold the same in trust, to use, manage and dispose of the same in whole or in part, or the rents, issues, profits and proceeds thereof, from time to time, at his discretion for the use, benefit and maintenance of his sister Caroline.

It is my further will that there be paid to Thomas E. Larkin, my errand boy, an orphan about twelve years of age (provided he remains with me until my death), the sum of \$500 over and above his wages. I hereby appoint as guardian of the person and estate of my son Horace, Edward P. Evans, late Professor in the University of the State of Michigan, have and to hold the said office of guardian and to exercise the authority thereto belonging, with such powers and subject to such instructions as I may have heretofore or may hereafter communicate and deliver to the said Evans in writing, which written communications and instructions are to govern his conduct in all cases; said office and guardianship to continue until my son shall arrive at the age of twenty-one years. And it is moreover my will, and I order and direct,

that no one shall or can take anything by or under my will, who shall claim or recover anything in opposition thereto, or to any disposition therein contained, or who shall aid or abet any other person in so doing.

(HIS BURIAL PLACE AND MONUMENT.)

It is my will that upon my decease my body be buried or entombed on my Redwood farm, on the northwesterly slope of Eagle Hill; that the grave or tomb be finally covered with a very thick block of Scotch granite.

It is further my will and earnest desire and request that no other monument shall be built to my memory there or elsewhere, until the expiration of one hundred years from the time of my decease.

Finally, I do hereby appoint to be executor of this, my last will and testament, Albert Hart, (at present Librarian in the new San Francisco Law Library), and in case of said Hart's decease, or of his inability or refusal to act, then I do appoint, to succeed in the place and stead of said Albert Hart, as my executor, Edward R. Sherburne, both above-named being of the City and County of San Francisco.

Signed, executed and declared as and for my last will and testament, in the City of San Francisco, on the 2d day of March, 1871, in presence of the undersigned witnesses, who, at my request, and in my presence and presence of each other, have hereunto subscribed their names as attesting witnesses.

HORACE HAWES.

Executed as above declared in presence of us, the undersigned attesting witnesses, by the testator above-named, who, according to all appearance and our firm belief, is, at the time of such signing and execution, of perfectly sound mind and memory.

STILLMAN N. PUTNAM, San Francisco.

ALFRED CLARKE, San Francisco.

Filed for Probate, April 11th, 1871.

## DEED OF FOUNDATION OF MONT EAGLE UNIVERSITY.

*This Indenture, made in the City and County of San Francisco, in the State of California, United States of America, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-one, between HORACE HAWES, of the said City and County of San Francisco, the party of the first part, and grantor herein, and HORATIO STEBBINS, HORACE DAVIS, J. W. BATTAN, GEORGE H. HOWARD, all of the City and County of San Francisco, and E. P. EVANS, late Professor in the University of Michigan, and now temporarily residing in Germany, parties of the second part. Witnesses: That the said party of the first part, for the purpose of endowing, establishing and maintaining a University, with the location, name, character and conditions hereinafter mentioned, doth by these presents give, grant, alien and convey unto the said parties of the second part, their associates and successors, to be appointed as hereinafter mentioned, all that certain farm or tract of land situated in the County of San Mateo, adjoining the town of Redwood City, called "Redwood Farm," and which is more particularly bounded and described as follows: Commencing at a point marked by a block of granite about three feet and a half long, thirteen inches wide, and eight inches thick, more or less, and placed in the ground perpendicularly so as to leave the top a little below the surface or even with it, and situated in the southwesterly line of the county road leading from San Francisco to San José, at its intersection with the southerly line of the road known as the "Whipple Road" and the same is now traveled, and being the road, forty chains in length of which was dedicated to public use, pursuant to the covenants in a certain deed made and executed by Soledad Ortega de Arguello, José Ramon Arguello and Louis Antonio Arguello, bearing date the twenty-second day of October, 1851, and recorded in the office of the Recorder of San Francisco County, in Liber No. 12 of Deeds, page 353; the said point of beginning bearing south forty-three degrees east (S. 43 deg. E.), one (1) chain from the northeast corner of the Engert tract; thence running along the southwesterly line of the said county road south forty-three degrees east (S. 43 deg. E.), forty-two chains and seventy-two links (12.72 chs.) to a point marked by a block of granite six feet and six inches in length, one foot wide, and eight inches thick, more or less, placed perpendicularly in the ground about one half its length below and one half above the surface, and situated in an angle of the southerly line of the aforesaid county road; thence along the southwesterly line of the said county road south forty-eight degrees and thirty minutes east (S. 48 deg. 30 min. E.), seventy chains and seventy-three links (70.73 chs.) to a point marked by a block of granite six feet and six inches in length, twelve inches wide and eight inches thick, more or less, placed perpendicularly in the ground about one half its length below and one half above the surface, and situated in the southwesterly line of the said county road; thence south forty degrees and thirty minutes west (S. 44 deg. 30 min. W.), one hundred and fifteen chains (115 chs.) to an oak sapling blazed and stand*

... of said McGarvey's lot, thirty-five chains and eighty-nine  
(89 chs.) to an oak stake marked H. H., from which an oak  
and B. T., bears south twenty-four degrees and thirty minutes  
deg. 30 min. E.), distant twenty-five links (25-100 chs.);  
right angles north forty-five degrees and thirty minutes west  
(45 deg. 30 min. W.), one hundred and thirteen chains and thirty-  
one (113.31 chs.) to an oak tree twelve inches in diameter, marked  
ence north forty-four degrees and thirty minutes east (N. 44  
deg. 30 min. E.), one hundred and seventy-eight chains and twelve  
(178.12 chs.) to the aforesaid described point of beginning; the  
survey having reference to the true meridian, the variations of  
the true meridian being fifteen degrees and seventeen minutes  
south (15 deg. 17 min. S.), containing two thousand and twenty acres  
Reserving unto the said Horace Hawes, his assigns, and the  
body only, a certain parcel or portion of the above-de-  
scribed land lying contiguous to and surrounding the Mansion House  
cess of construction by the said Horace Hawes, on said Red-  
wood Farm, namely: The land bounded on the southwest by the  
easterly boundary of said Redwood Farm; on the southeast by  
the westerly boundary of said Redwood Farm; on the northeast  
to be run parallel with the aforesaid southwesterly boundary  
through a point at a distance of seventy rods northeast  
from the Mansion House, measuring from the easterly corner of said  
the northwest by a line to be run parallel with the south-  
westerly boundary of said Redwood Farm through a point distant one  
hundred rods northwest from the said Mansion House, measuring from  
the corner aforementioned; the said Horace Hawes reserving to  
his assigns and his said heirs of his body, at any time within  
from this date, the right to survey and run off the north-  
westerly and northwesterly boundaries of said reserved tract by run-  
ning courses instead of straight lines, but so as to include  
a greater quantity of land than would be included by such straight  
lines; the said reservation of the above-described tract or parcel of  
land to be subject to the right which is hereby granted to the said  
Horace Hawes, his assigns, and their associates and successors, to take water,  
from the said reserved land for the use of the

Horace Hawes, his assigns and his said heirs, having at all times the prior right to the use of the water, rock and gravel, so far as necessary for his or their personal use and convenience; and the privileges granted to the parties of the second part, their associates and successors, are to be exercised without damage or prejudice to the necessities, work, buildings, structures or improvements of said Hawes, his assigns or his said heirs, on or in the use of said reserved land. But it is expressly declared hereby, that the estate reserved in said tract is limited and conditional, and is to revert to the said parties of the second part, their associates and successors, upon the condition and upon the happening, of the event that there shall be in existence no lineal descendant of the above named grantor legally capable of inheriting the same, in which event the said land and appurtenances are hereby granted and confirmed to said parties of the second part, their associates and successors, to have and to hold forever, subject to the trust conditions and provisions of this deed. The said Horace Hawes also reserves the land, which he, his said heirs or assigns, may wish to occupy for the construction of a road not more than eighty (80) feet wide, leading from the said reserved land to the county road, on one of the boundaries of said farm, by such route as he, his said heirs or assigns may within ten (10) years from this date select and survey. Also, all that certain lot or block of land situated in the City and County of San Francisco, being the northeasterly half of the block known and designated on the official map as Mission Block number eight, more particularly described as follows: Bounded by Folsom, Harrison and Tenth streets, and southwesterly by a straight line running through the center of said block eight from Folsom to Harrison street, parallel with Tenth and Eleventh streets, excepting the lot fronting on Harrison street belonging to the School Department, being about half of a fifty-vara lot. Also, all that lot of land one hundred and thirty-seven and a half feet square, situated in the City and County of San Francisco, at the southwest corner of Pine and Sansome streets, known, and on the official map designated, as fifty-vara lot number two hundred and five (205), being the lot at present leased to J. H. Blumenberg. Also, all that certain block of land situated in the City and County of San Francisco, known, and designated on the official map, Mission Block number two (2), bounded by Folsom, Howard, Ninth and Tenth streets. Also, all those certain lots of land situated in the City and County of San Francisco aforesaid, lying adjoining each other, and fronting on the west side of Front street, between Vallejo and Green streets, being together ninety-one feet eight inches wide (91 ft. 8 in.) in front and rear, and running back at right angles to, and westerly from Front street, to a depth of one hundred and thirty-seven and a half feet (137½ ft.), being the two lots known, and on the official map of the city designated, as Beach and Water Lots numbers nine (9) and ten (10). Reserving unto the said party of the first part and grantor above named, the power, by his Last Will and Testament, to subject the above described land, or any part or parcel thereof (University Grounds excepted), to the payment of any annuity, charge, sum or sums of money to be paid out of the annual rents, issues and profits, or net income thereof, in such amounts, at such times and to such person or persons as the said party of the first part in his said Last Will and Testament shall designate. Reserving also unto the said grantor and party of the first part in all the lands and property herein granted and conveyed, an estate coupled with the possession, and the rents, issues and

profits thereof, to continue for and during his natural life. Finally, reserving unto the party of the first part and grantor above named the power, to be exercised only by himself personally in his lifetime, by his deed in writing, *inter vivos*, duly executed and acknowledged as deeds of conveyance of real property are by law required to be, to change or modify any of the provisions of this deed, or to revoke, annul and render absolutely of no effect, in whole or in part, at his option, or otherwise at his option to modify the grant and conveyance herein contained of any or all of the above mentioned or described lands and property, or any part or parcel thereof, or to grant and convey the same, or any interest therein to any other person or persons. To have and to hold the above granted lands and property, subject to the reservations aforesaid, unto the said parties of the second part, their associates and successors, to be appointed as hereinafter provided, forever. In trust for the establishment and maintenance of an institution of the highest order for the increase and diffusion of knowledge among men, to be known by the name of Mont Eagle University, with the intent that said University shall furnish for resident students the most comprehensive course of instruction, and all the appropriate means and facilities for the most profound, liberal and complete education that now are or hereafter may be supplied by any university, or establishment for the increase or diffusion of knowledge, and shall moreover embrace and contain in its organization the six distinct professional and industrial departments of Law, Medicine, Agriculture, Mechanic Arts, Commerce and the Fine Arts; so that therein young men may be instructed and fitted, not only for a successful career in those respective professions or callings, but also to elevate those professions and callings in point of dignity and public respect. It is accordingly hereby enjoined upon and confided to the said parties of the second part, the survivor or survivors of them, that they do, after the expiration of two years, and within ten years from the date of these presents, by and with the advice, concurrence and consent of the persons who for the time being shall be the Judges of the Supreme Court of the State of California, or a majority of them, appoint ten other persons, or such number as with the number of said parties of the second part then living will constitute fifteen in all; and, the said appointment being made, and evidenced by deed duly acknowledged and recorded as deeds of conveyance are by law required to be, the said above granted land and property, with and subject to the trust herein created, shall thereupon vest in said fifteen persons, who, with their successors to be appointed as hereinafter mentioned, shall constitute the Board of Trustees of the said Mont Eagle University, and shall have, hold and administer the said property for the uses and purposes, and exercise the power and authority, herein specified, granted and limited. Either of the said parties of the second part, previous to the organization of the Board of Trustees as aforesaid, shall have power during his absence from the State of California, to act by a substitute or attorney-in-fact, by him to be appointed by an instrument in writing under his hand, which said appointment, before the substitute can act as such, must be approved by such of the said parties of the second part, not less than three, as shall then remain in the State of California; such approval to be endorsed upon the instrument of appointment. The above grant, donation and conveyance, and the endowment and foundation of said Mont Eagle University, are made upon, and forever remain subject to, the following



specific conditions, limitations and restrictions: *First*—That from other donations and sources entirely independent of the herein granted property, and of the rents, issues, profits and income thereof, there shall be raised, collected and expended, for the use, benefit and building up of the said Mont Eagle University, in the construction of suitable and necessary buildings, the purchase of library and apparatus, and in other permanent arrangements and improvements, in all things conformably with this Deed of Foundation, and the conditions, provisions and restrictions therein contained, the sums of money, and within the times following, namely: Within fifteen years after the decease of the said grantor and party of the first part, the sum of one hundred thousand dollars. Within thirty years after the decease of the said grantor and party of the first part, five hundred thousand dollars. Within fifty years after the decease of the said grantor and party of the first part, one million five hundred thousand dollars, and within one hundred years after the date of this deed, four million dollars. And in default either of raising, collecting and expending the said sums of money, in manner aforesaid, or of raising, collecting and expending the same within the precise times and periods aforesaid, then and thenceforth, from the time of such default, the grant and conveyance of the property in this Deed of Foundation mentioned or described, except that portion hereinbefore designated as “University Grounds,” shall be *ipso facto* and absolutely void, and the property aforesaid in this deed granted or conveyed, except as aforesaid, shall revert to and vest in such person or persons as the said grantor and party of the first part, by his deed, *inter vivos*, or by his last will and testament, shall appoint, and in defect of such appointment, in the heirs male of the body of the said party of the first part, from him lineally descended, and in defect of such heirs, in the Government of the United States of America, for the use of the Smithsonian Institute, now located in the City of Washington. *Second*—The location of said University shall be on the hill on said “Redwood Farm,” now known as “Eagle Hill;” and the grounds within the present enclosure around said “Eagle Hill,” supposed to be about eighty acres, are to be and remain forever for the immediate occupation and use of the Institution, and are forever reserved from sale, alienation or encumbrance, and are herein designated by the name “University Grounds.” *Third*—Thirty-five lots, containing each three acres, shall be selected, reserved and set apart for the use, occupation and residence of Professors and Instructors, and one lot containing fifteen acres shall be reserved for the residence of the President. These lots are herein designated as “University Lots.” *Provided*, that the reservation of said University Lots may be omitted in whole or in part, or if the lots should be reserved and set apart, as aforesaid, they may afterwards be leased, alienated or otherwise disposed of for the benefit of the University, in conformity with a decree to that effect, which the Electoral College shall have power to enact or make. *Fourth*—The rest of the lands of said Redwood Farm shall be subdivided into villa lots of convenient dimensions, with suitable reservations for streets, roads, ways, parks, and other common grounds if need be, all which reservations shall be for the common use of the proprietors or occupants of villa lots, as well as of the professors, instructors, faculty officers, students, graduates and members of the University, the which subdivisions and reservations, however, as well as the selection and designation of “University Lots,” if made prior to the expiration of one hundred years from date of these presents, shall be subject to

be changed or modified at or after the end of that period. *Fifth*—The lands of Redwood Farm (except the University Grounds after they shall be occupied by the University), may be leased out by the Board of Trustees from time to time in such portions or subdivisions, and for such term or terms as the Board may deem expedient, but which term or terms in no case shall extend beyond the period of one hundred years from the date of these presents, so that at the end of said period of one hundred years from the date of these presents, every lease, contract or encumbrance whatsoever affecting the said lots and lands, shall terminate, leaving the said lots and lands at that date absolutely free and unencumbered. At the expiration of the aforesaid period of one hundred years, and thenceforth the said Board of Trustees, subject to the lawful rules and regulations established by the Electoral College, shall have power, definitively and permanently, to establish the plan of subdivisions and reservations hereinbefore contemplated, mentioned and authorized, and shall have power to sell and convey the said villa lots in fee simple or otherwise, or to lease out and demise the same, or otherwise dispose thereof for the use and benefit of the University. *Sixth*—That portion of the property above granted which is situated in the City and County of San Francisco is to be leased out from time to time for the benefit of the University, but shall never be sold, alienated or encumbered otherwise than by leasing as aforesaid; nor shall any lease or demise ever be made for a term longer than one hundred years; nor, until the expiration of fifty years from this date, shall any lease or demise be made for a term longer than twenty years; and after the expiration of fifty years until the expiration of one hundred years from this date, no lease or demise shall be made for a term longer than fifty years. *Seventh*—The annual rents, issues and profits and the entire proceeds and income of all the lands and property herein granted are to be applied and used solely for the establishment and maintenance of the course of instruction in said Mont Eagle University forever; and the proceeds of any sales which may be made of said villa lots at Redwood shall be permanently funded or invested, and the interest and income only (keeping whole the capital), shall, from time to time, be expended and applied for the same purpose. *Eighth*—The Board of Trustees of Mont Eagle University shall permanently consist of fifteen members as aforesaid, and vacancies which may occur from death, resignation, refusal to serve, incapacity, or from any cause, shall be filled by appointments to be made by the remaining members, which appointments (without prejudice to the power of the appointee to act in the interim), shall be subject to the confirmation or rejection of the Electoral College when it shall be organized and assembled as hereinafter provided. A quorum of the Board of Trustees, necessary for the transaction of business, shall consist of at least six members, and for any act of the Board, except adjournment, the concurrence of at least five members and of a majority of the members present, shall be requisite. And the said Board, until the said organization and assembling of the Electoral College, shall have power by standing rules and regulations, or orders, to define and determine what shall constitute incapacity to serve as a member of the Board, and also to prescribe a mode of assembling the Board, and the manner of conducting its sessions and proceedings, and shall also have power, under and subject to the provisions, conditions, limitations and restrictions herein contained, to ordain rules and regulations for the establishment organization, maintenance and government of the University;



of all which rules, regulations and orders, a permanent record shall be kept under the title of "Ordinances of Mont Eagle University," all which ordinances of the Board of Trustees shall be subject to amendment and repeal by the Electoral College. *Ninth*—The Board of Trustees, under and subject to the provisions, conditions, limitations and restrictions herein contained, and subject to the Statutes enacted by the Electoral College in conformity therewith, are charged with the administration of the herein granted, and all other property of the University, and the management of its financial affairs. The said Board shall also appoint the President, Professors, Instructors, and other employes of the University, until some other mode of appointment shall be provided by the Statutes of the Electoral College. The services of the members of the Board of Trustees, as such, are to be gratuitous, and the acceptance of the office is to be deemed subject to that condition. *Tenth*—From and after the organization and assembling of the Electoral College, that body shall have power to ordain and establish laws, rules and regulations, not inconsistent with the conditions, limitations, restrictions and provisions herein contained, for the establishment, maintenance, management and government of the said Mont Eagle University, of which laws, rules and regulations a permanent record shall be kept under the title of "Statutes of Mont Eagle University." The Electoral College shall assemble at the University every ten years, commencing the sessions on the thirtieth (30th) day of November, namely, in the years of our Lord Jesus Christ, indicated by the figures or numbers ending with a cipher—as, 1880, 1890, 1900, 1910, and so on forever. The members shall consist of the President, Professors and Electors of Mont Eagle University. *Eleventh*—Every accredited graduate, who in and under the said institution shall have pursued and taken the regular prescribed course of science (embracing at least four years of resident study and instruction), and attained the degree of Bachelor of Arts, or an equivalent degree under another title, and shall also, and after that, have spent at least three years in the prescribed studies, reading and exercises, and also have graduated in one or more of the said professional or industrial departments, shall receive and have conferred upon him, evidenced by diploma, the degree and title of Doctor. After the lapse of ten years from the time of receiving his said degree and title of Doctor, he shall have conferred upon him, evidenced also by diploma, the additional degree, title and office of Elector of Mont Eagle University, by virtue whereof he shall be *ipso facto* a member of the Electoral College. *Twelfth*—The Electoral College shall appoint its presiding and other officers, make rules for the regulation of its proceedings, keep a permanent record of its acts and proceedings, and inspect the credentials and determine the fact of the qualification of its members in case of doubt. No session of the Electoral College can take place without the presence of eighteen Electors at least, and none of the powers of the College can be exercised without the concurrence of eighteen qualified members, and of a majority of the members present when more than thirty-five shall be in attendance. *Thirteenth*—A permanent record shall be kept of the vote of each member of the Electoral College, on all questions except questions of adjournment from day to day. *Fourteenth*—All matters and questions affecting the management and government of the University, or the leasing, conveyance or other disposition or administration of its property, not determined by the provisions contained in this indenture, shall be settled and determined by the statutes to be made, enacted and estab-

lished by the Electoral College, and *ad interim*, until the first session of the Electoral College, by the ordinances of the Board of Trustees. *Fifteenth*—No honorary degree or title shall ever be conferred by Mont Eagle University, by diploma or otherwise; but every one receiving a diploma, degree, or title, which the University has power to confer, must have become entitled thereto by resident study and application to the prescribed course of science or learning, for the prescribed period, in the institution itself. *Sixteenth*—The collection of books, pamphlets and other reading matter destined for the Library of Mont Eagle University, shall be arranged in separate and distinct halls and departments, one to be known as the “Vestibule” and the other as the “Library.” In the latter are to be placed only such publications as, upon a full and critical examination by a Standing Commission consisting of Professors and Electors of the University, shall have been approved as useful. Upon each volume so approved shall be impressed in print the word *Cognoscimus*. All books in possession of the University must remain in the “Vestibule” until they shall have passed such examination and approval. Every Elector of Mont Eagle University, wherever he may be, is *ex officio* a Commissioner to examine and recommend to the favorable consideration of the Standing Commission aforesaid, such new books and literary works as shall come to his notice, and he shall deem worthy of a place in the “Library.” It is hereby declared to be the true intent and meaning of this Deed of Foundation that none of the provisions therein contained are to be deemed or construed as merely directory, but all of said provisions are and are to be construed as absolutely mandatory, defining and limiting the powers of said parties of the second part, and of the Board of Trustees, Electoral College, and all other authorities of Mont Eagle University, in such manner as to cause the nullity of acts done in contravention thereof.

In witness whereof, the said Horace Hawes, party of the first part, hath hereunto set his hand and seal, the date first herein written.

HORACE HAWES. [SEAL.]

Signed, sealed and delivered in presence of

OLIVER ELDRIDGE,  
LLOYD BALDWIN,  
JAMES OTIS.

## DEED OF FOUNDATION OF CHAMBER OF INDUSTRY.

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*This Indenture, made this thirty-first day of October, in the year of Our Lord, One Thousand Eight Hundred and Seventy, between HORACE HAWES, of the City and County of San Francisco, State of California, party of the first part, and ALBERT DIBBLEE, JAMES DE. FREMERY, JOHN TAYLOR, HORATIO STEBBINS, D. D. and ANDREW S. HALLIDIE, also of said City and County, parties of the second part, Witnesseth:*

That the said party of the first part, for the consideration, purpose and use declared in the trust herein created, doth, by these presents, give, grant and convey unto the said parties of the second part, their associates and successors to be appointed as hereinafter mentioned, all that certain lot or block of land, situated in the City and County of San Francisco, known and described on the official map as Mission Block number forty-four, bounded by Harrison, Bryant, Ninth and Tenth Streets.

*To have and to hold the above described and granted land unto the said parties of the second part, their said associates and successors, (without the power to sell, alienate or encumber the same or any part thereof, except as hereinafter provided,) forever; in trust, to use and occupy the said land, and apply the annual rents, issues and profits thereof, for the endowment, establishment and maintenance of a philanthropic institution, dedicated and directing all its operations to the prevention of want by means of the protection of labor, and the promotion of useful industry; which establishment shall be organized and maintained under the name of the CHAMBER OF INDUSTRY, and, within ten years from the date hereof, shall be and remain located upon the above donated and granted land. It is hereby confided to and enjoined upon the said parties of the second part, the survivor or survivors of them, or such of them as may then reside or be in the State of California, that they do, after the expiration of two years, and within ten years from the time of the delivery of these presents, by and with the advice, concurrence and consent of the persons who, for the time being, shall be the Judges of the Supreme Court of the State of California, or a majority of them, appoint ten other persons, or such number as, with the number of said parties of the second part then living, will constitute fifteen in all; and the said appointment being made, and evidenced by deed duly acknowledged and recorded, as deeds of conveyance are by law required to be, the said above granted land, with the trust attached, shall thereupon vest in said fifteen persons, who, and their successors, to be appointed as hereinafter mentioned, shall constitute the Board of Trustees of said Chamber of Industry. The Board of Trustees of said Chamber of Industry shall consist of fifteen members, as aforesaid, until the expiration of thirty years from the date hereof; at and after which date, the said Board shall have power to increase their number to twenty-five by the appointment of new members, to be made by the Board itself. Both before and after such increase of numbers, vacancies in the Board of Trustees, which may occur by death, resignation, refusal to serve, incapacity, or from*

any cause, shall be filled by appointments to be made by the remaining members. The ordinances of the Chamber of Industry, established by the said Board of Trustees, shall define and determine what shall constitute incapacity to serve as a member of the said Board, and shall also prescribe the mode of assembling the Board, and the manner of conducting its sessions and proceedings. A quorum of the Board of Trustees shall consist of at least twofifths of all the members, and for any act of the Board, except adjournment, the concurrence of at least five members and a majority of the members present, shall be requisite. Reasonable notice of the time and place for meetings of the Board shall be given. A record shall be kept of the vote of each member on all subjects acted on by the Board, except questions of adjournment from day to day. After the number of the Board of Trustees shall have been increased to twenty-five, the said Board shall have power to appoint from among its members a chief executive officer of the Institution, with the title of GOVERNOR OF THE CHAMBER OF INDUSTRY, to hold office during good behavior and the pleasure of the Board, who, either alone, or with the concurrence of two counselors to be named and chosen by the Board from among its members, shall exercise such of the powers of the Board as may be delegated to him by the ordinances of the Chamber of Industry. The services of the members of the Board of Trustees are to be *gratuitous*, and the acceptance of the office is to be deemed subject to that condition, but the Governor and Counselors shall receive such compensation as may be provided by the ordinances of the Chamber of Industry, the amount of such compensation being first approved by the persons then being the Judges of the Supreme or highest court of law in the State, or a majority of them.

The above-named grantees and parties of the second part, before the organization of the Board of Trustees, may exercise such of the powers herein granted to the said Board of Trustees as there may seem to be urgent need of, including such improvements of the property as they may be prepared and have sufficient funds to make without encumbering the property, but shall not have power to make leases except for a term or terms which shall expire within a period of ten years from the date of these presents. The Board of Trustees of the Chamber of Industry, for the purposes, and under and subject to the conditions, limitations, restrictions, rules and provisions herein contained and expressed, shall have power to administer and manage the above granted and all other property of the said Institution, and to establish, manage, regulate and govern the said Chamber of Industry. Of the rules and regulations established by the said Board of Trustees for that purpose, a permanent record shall be kept, under the title of "ORDINANCES OF THE CHAMBER OF INDUSTRY." The Board of Trustees shall not have power to sell, alienate or encumber the herein granted land, or any part of it, but may demise the same, or any buildings and improvements thereon, for a term or terms, which, until the expiration of one hundred years from the date hereof, shall not exceed twenty years, and after the expiration of that period, no lease or demise shall be for a term greater than fifty years; and every lease or demise made previous to the expiration of one hundred years from the date of this deed, shall expire and terminate at the end of said period of one hundred years, leaving the whole property then absolutely free and unencumbered by leases or otherwise. After the expiration of the said period of one hundred years, or before if deemed expedient and found practicable, the whole of the above granted block of land shall be

built up and improved with permanent fire-proof buildings and upon a uniform plan, by the Board of Trustees, which improvements may be commenced as soon after the expiration of forty years from this date, and prosecuted as fast as the necessary money can be raised for the purpose without encumbering the property (land or buildings); it being the intention of the above named grantor, that after the said period of one hundred years, all buildings and improvements upon the above granted land, shall be the property of the said Chamber of Industry exclusively. It is also the intention of the said grantor and founder, that the building or buildings covering the said block of land shall be of two or three stories in height, the first or ground story, consisting of portions to be leased out for the purpose of raising funds for the support of the institution, the second floor being set apart for the Assembly Chamber, offices and bureaus belonging to the Institution, and the third floor (if there be three stories) may be for such uses as the Board of Trustees may find most profitable and convenient, it being understood that the Board will be at liberty to place on the third floor such offices used by the Institution as they may deem convenient, on account of being less frequented, or for other reasons. As further conditions attached to the above grant, and for the regulation and government of the said Institution and Establishment, the following fundamental rules, limitations and restrictions are prescribed, to be inviolably observed forever. *First* and foremost, the operations of the said Institution must be confined and steadily directed to the object and result hereinbefore precisely expressed—which are, not directly to relieve want, but to prevent it; and to ameliorate the condition of those who subsist by manual labor. *Second*.—It shall be a leading object of the Institution, without compensation or reward, to procure useful employment for all who seek it, and to encourage and incite to industry all who are prone to be idle or indolent, and to this end its special efforts shall be directed. *Third*.—The efforts of the Institution shall likewise be directed to procure that all shall be instructed and trained from childhood to some suitable occupation, whereby they can obtain an honest living. *Fourth*.—Systematic provision shall be made by said Institution, gratuitously, to instruct and inform the laboring class in the best plans and mode of construction for their dwellings, barns, stables, shops and other buildings, so as to render them most healthful and convenient at the least practicable expense, and in all things else, as far as practicable, how their labor can be economized and most effectively applied; and so, without lessening the industry, lighten the toils, and increase the health, comfort and happiness of all classes of laboring men and women. *Fifth*.—In said Institution shall be continually collected and preserved, the most extensive and minute statistics and information respecting every branch of industry, and the information thus collected shall be gratuitously imparted in all time, and to all persons. *Sixth*.—To facilitate the operations of said institution, it shall have established, progressively as need and occasion require, appropriate and convenient departments, bureaus and offices, and an Assembly Chamber of sufficient capacity, in which information and instruction shall be regularly disseminated by means of public addresses and lectures; and for the same purpose it is also contemplated, but not absolutely enjoined, that ultimately, printed books and other publications will be issued by the Institution.

After the lapse of thirty years from the date hereof, Electors of MONT EAGLE UNIVERSITY (an institution hereafter to be established and



organized), who have obtained that title by graduation in the department of Agriculture or the department of Mechanic Arts of said Institution, if they can be found otherwise fit, qualified, sufficiently responsible and willing to serve, shall be appointed to fill vacancies which may happen from time to time in the Board of Trustees whenever there shall be less than a majority of the whole number of members already possessing the degree and title of such Electors, but this provision is not to be construed so as to prevent the appointment of such Electors in a larger proportion than a bare majority of the whole number, or before the expiration of said period of thirty years, if such graduates can be found fit, qualified, responsible and willing to serve, as aforesaid.

It is hereby declared to be the true intent and meaning of this Deed of Foundation, that none of the provisions therein contained are to be deemed or construed as merely directory, but all of said provisions are, and are to be construed, as absolutely mandatory, defining and limiting the powers of said parties of the second part, and of the Board of Trustees of said Chamber of Industry, in such manner as to cause the nullity of acts done in contravention thereof.

*In Witness Whereof*, I, the above-named HORACE HAWES, Grantor and Founder, have hereunto set my hand and seal, the day and year first above written.

HORACE HAWES. [L. s.]

STATE OF CALIFORNIA, }  
City and County of San Francisco. } 88.

On this thirty-first day of October, A. D. One Thousand, Eight Hundred and Seventy, before me, SAMUEL HERMAN, a Notary Public, in and for said City and County, duly commissioned and sworn, personally appeared the within and above-named HORACE HAWES, whose name is subscribed to the foregoing Instrument as a party thereto, personally known to me to be the individual described in, whose name is subscribed to, and who executed the said foregoing Instrument, and duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[L. s.]

SAMUEL HERMAN, Notary Public.



# REPORT OF PROCEEDINGS ON TRIAL.

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IN PROBATE COURT OF THE CITY AND COUNTY OF SAN FRANCISCO.

NOVEMBER TERM, A. D. 1871.  
Present, SELDEN S. WRIGHT, Judge. }

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in the Matter of Probating the last Will and Testament  
OF  
HORACE HAWES, Deceased. }

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## COUNSEL APPEARING.

For Petitioner, FRANK KENNEDY.

For Contestant, W. H. L. BARNES and J. C. BATES.

For absent and Minor Heirs, CHAS. H. SAWYER.

For Trustees of Mont Eagle University, LLOYD BALDWIN.

For Guardian, appointed under the Will, BARTLETT & PRATT.

For other persons interested in the Will, LLOYD BALDWIN.

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SAN FRANCISCO, November 14th, 1871.

The jury were sworn to answer questions as to their qualifications to sit as trial jurors in the case.

Mr. Kennedy stated the nature of the case to the jury, and the special issues to be tried.

The venire having been exhausted, and only eight jurors obtained, the Court ordered an additional venire to issue, returnable at 2 o'clock P. M.

THE COURT [To the jury]—We will now take a recess until two o'clock. In the meantime, gentlemen, you will not converse with any person about this case, and keep your minds as nearly as possible from forming any opinion about the case, and not suffer any person to converse about it with you, or in your hearing. [Here the Court took a recess until two o'clock.]

## AFTERNOON SESSION.

Mr. Armstrong, a juror, was excused, by consent of all parties, from serving in the case.

MR. BARNES—The sheriff has notified counsel it will be impossible for him to have the additional venire served so as to get the jurors here before ten o'clock to-morrow morning; and I am going to suggest to your Honor, whether it would not be desirable to let the jurors



here go, until ten o'clock to-morrow morning, and, on their retiring, we can consider some questions that have to be determined preliminary, between the parties ; so as to save time of the Court, and not keep the jurors here unnecessarily.

THE COURT—Gentlemen of the Jury, you may retire, bearing in mind the instructions given you when you separated in the morning. You are not to talk about this case, or suffer any person to talk to you about the case, or in your presence. Keep your minds as clear as possible and come to no conclusion, in any manner, until you hear the testimony. You will now be discharged until eleven o'clock to-morrow morning, when a prompt attendance is requested.

MR. BARNES—There is one subject about which there is likely to arise some discussion, and which may perhaps as well be settled and understood at this time as any other.

Messrs. Pratt and Bartlett are here claiming to represent, and in point of fact representing, as possibly it may be as well to admit, one Edward P. Evans, concerning whom there is this direction in the will: "I hereby appoint as guardian of the person and estate of my son Horace, Edward P. Evans, late Professor in the University of the State of Michigan, to have and to hold the said office of guardian and to exercise the authority thereto belonging, with such powers and subject to such instructions as I may heretofore or may hereafter communicate and deliver to the said Evans in writing, which written communications and instructions are to govern his conduct in all cases. Said office of guardianship to continue until my son shall arrive at the age of twenty-one years."

Now Mr. Bartlett announced, when your honor made some inquiry the other day, as to the length of time this case would probably occupy, that he should have twenty-one or twenty-two witnesses to examine. Under our view of the case, and as I believe the law stands, Mr. Evans has no standing in Court to be heard here for any purposes whatever. He has no rights for himself, and none which counsel can represent. He is not a contestant here, he is not a party propounding the will for probate.

The will is propounded by Albert Hart, the executor named in the will, and the usual proceedings have been taken by him under the Probate Law. The statute provides, section five, chapter second, relating to the proof of wills "any person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, present the will, if in his possession, to the Probate Court which has jurisdiction, and in case he does not do it, or in case he has not the will, any person named as the executor of the will, though the will is not in his possession, may present his petition to the Probate Court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate and the letters testamentary may be issued to him, that any person having an interest in the will may in like manner present a petition praying that it may be required to be produced and admitted to probate." That is the particular law on the production and tendering of wills to this court for probate. The executor named in the will has already taken the necessary preliminary steps, and tendered the will with his petition for probate. One of the heirs at law interested in the estate, has brought here and filed a contestation, as directed to be filed by law, and has set

up certain matters in opposition to the will, under the statute of 1868. Then, between the contestant and the executor who propounded the will for probate, issues have been made and settled by this Court, and are now about to be tried by the jury, the executor on the one side and the contestant on the other, unless other persons interested in the will appear. In this 18th section, it says, that any person interested may appear and contest the will. She is the only one who has filed a contestation here, and is the only person between whom and the executor, there is any contest whatever. Mr. Evans has then, under the statute, no standing in Court whatever. He is not a party who propounded the will for probate, nor is he a person interested in the estate. He has no interest in it whatever of any kind, nature, or description. His nomination as guardian is a mere collateral thing, which stands or falls by the will. This issue has nothing whatever to do under any statute with Mr. Evans. He never qualified as guardian under any statute. He might come in here and renounce his guardianship, whenever the question comes for him to take possession of that boy under the will, and take care of him until he is of that age stated therein. Such a case may be had under the statute as may disqualify him from having the care and nurture of one of tender years. Therefore he has no present interest in the estate and has no interest at present under the will. Therefore we object to Mr. Evans being allowed to come in here and be put in a position on this record, either in the impaneling of this jury or in the cross-examination of witnesses, or from taking exceptions, or in conducting the case by counsel, in any mode or form; because if this case shall be tried as between the executor and contestant here, Mr. Evans appearing here to be a party in interest, and having a right to examine witnesses and take exceptions, Mr. Evans then may take an appeal to the Supreme Court of the State of California and insist upon a reviewal and upon a determination by that Court of exceptions taken by him in a case in which he is a party volunteer, and has no interest of any name, nature, or description. And that is the question I shall call your Honor's attention to.

[After further argument by W. H. L. Barnes and Mr. Pratt.]

**THE COURT**—It seems to me, gentlemen, that the question whether Messrs. Bartlett and Pratt have a right to appear here, would be a question between the executor and Messrs. Bartlett and Pratt and not between Messrs. Bartlett and Pratt and the contestants here. The presumption is that the executor appears for every one; and the presumption also follows that every person interested in the will is interested in establishing the will. And therefore the executor represents every person interested in the will presumptively. Now if the executor chooses to avail himself of the assistance of Messrs. Bartlett and Pratt while they are on the same side, and both contending that the will is a valid will, I don't see how any difficulty can arise between them at all. The statute provides, that if there are absent parties or minors interested in the estate, it is the duty of the Court to appoint some person to represent them. They, being appointed to represent certain parties, have some standing in Court.

**MR. BARNES**—[Interrupting]. I will only say, we have such a functionary—Mr. Sawyer is attorney for all absentees.

**THE COURT**—Supposing an absentee should choose to employ his own attorney, instead of the attorney appointed by the Court. He certainly would have a right to do so. The question is, whether Mr.

Evans is an interested party in the will. The will contains certain provisions—making him guardian of the child. The father has a right to appoint a guardian of the child, excepting only the prior rights of the mother; and I held in making this appointment the other day, that Mrs. Hawes was entitled to the custody of this child, under the general laws of the State, whether she was appointed or not; that no appointment by her husband of a guardian would interfere with that maternal right. But so far as the case was concerned, until this will was established, she had the right and custody also of the property. It qualifying in that case that if this will should be established, why the establishment of the will would not deprive her of the custody of the child, but it might effect her rights as to the property of the child coming from and under the will of Horace Hawes. If established, I think Mr. Evans would be entitled to the property appropriated to the benefit of the child under the will, notwithstanding Mrs. Hawes might be entitled to the custody and possession of the child. Under such a state of facts I think he is a party interested in the will. And if he were an absent party it would be the duty of this Court to appoint some person to represent him in Court. I think he has a standing in Court. That is unless the words “party interested in the estate” should be limited, as Col. Barnes suggests, to the heirs of the estate, and not to the legatees of the estate. I think there is a good deal of plausibility in his argument that it is limited to the heirs of the estate. And yet it has been held in several cases that it extended to the legatees of the estate as well. The practice of this Court has been, where there are absent and minor legatees, to appoint parties to represent them. Now whether that appointment would have the effect suggested, of permitting the party to make his own bill of exceptions, and introduce his own order of witnesses, would depend on circumstances. If there is a conflict of interest between the executor on the one hand and the party thus claiming to hear, the Court would allow any testimony to be brought forward by the party having such a status in Court, and allow a special bill of exceptions in the proceedings had. There are no pleadings by which he can come in by any other way. Because after the executor has produced the will he has done all that the legatee under the will can demand at that time. He comes in and says “here is a valid will,” and asks that the will be probated. But then there comes a controversy on the other side, stating that it is not a valid will. But he (Evans) is on the same side as the administrator, and his interest will come in with the administrator at the close of the proceedings. I think the party here, under the way he is mentioned in the will, is a party in interest in the will and the estate, and has a right to be heard on any point he may except to in the progress of the trial.

MR. BARNES—The proper way, I suppose, now is, to wait until the testimony is offered and then take our exception and have your Honor rule upon it.

THE COURT—Yes, sir.

MR. BARNES—I understand your Honor to decide now that Mr. Evans has an interest in the will?

THE COURT—Yes, sir.

MR. BARNES—And that he is entitled to be heard here as a party to these proceedings?

THE COURT—A. Yes, sir.

MR. BARNES—And has a right to offer testimony and make objections and take exceptions?

THE COURT—Yes, sir. But I don't think I gave him the right that broad. But whenever he thinks his right demands that he should take an exception to certain rulings, and the executor refuses to do so, then I will give him the benefit or right to make those exceptions.

[Here the Court adjourned until to-morrow morning, at 11 o'clock.]  
Second day consumed in argument and summoning jurors.

### THIRD DAY.

NOVEMBER 16, 1871.

The Court met pursuant to adjournment, and there not being sufficient names in the Jury Books to enable the County Clerk to comply with the order of the Court heretofore made, ordered that a venire issue for twenty jurors to be summoned from the body of the County, and not from the bystanders, and that they appear in this Court to-day at one o'clock; whereupon the Court took a recess until one o'clock, P. M.

#### AFTERNOON SESSION.

The Sheriff returned the special venire served upon sixteen persons. William McDonald was examined upon his *voir dire*.

Mr. Kennedy peremptorily challenges the jurors O'Reilly and McDonald.

John Stark and Daniel Green are examined on their *voir dire*, and accepted; and the jury being sworn, Mr. Kennedy makes the following opening statement:

Gentlemen of the Jury: We have here a document purporting to be the last will and testament of Horace Hawes, which we expect to prove to you is such document. The questions to be determined have already been read to you; the issues to be tried here have been settled in regular form; and I will again read them to you for your information. The *first* question is: was the said Horace Hawes, deceased, of sound and disposing mind at the time of the execution of said alleged will?

*Second*: Was said alleged will signed by the said Horace Hawes, or by any person in his presence, and by his express direction?

*Third*: Was said alleged will signed by said Horace Hawes, and attested, as required by law?

*Fourth*: If the said alleged will was signed by said Horace Hawes, did he sign the same freely, without restraint, undue influence, or fraudulent misrepresentation?

These questions we propose to prove in the affirmative; all of them, to you.

ALFRED CLARKE—Called as a witness in behalf of the executor, sworn. Examined by Mr. Kennedy.

MR. KENNEDY—If the Court please, I will ask the witness a preliminary question. I wish to establish as a matter of course, the death of Mr. Hawes, and his residence.

Q. Are you acquainted with those facts?

A. I cannot say that I know of my own knowledge when he died; I didn't see him myself.

MR. BARNES—It is admitted that Horace Hawes died in this city and county, leaving an estate of real and personal property, on the 12th day of March, A. D. 1871, and that he was a resident of this county at the time of his death and for many years before.

MR. KENNEDY—If it is necessary we will put in our testimony by some other witnesses, if the admission is not deemed sufficient.

THE COURT—The admission is sufficient.

MR. KENNEDY—(Showing paper to the witness). Q. Have you ever seen that instrument before?

A. I have seen that before, sir.

Q. Is that your signature?

A. Yes, sir, that is my signature.

Q. What signature does that purport to be up there? (Showing.)

A. That is the signature of Horace Hawes.

Q. Did you sign your name to that at Mr. Hawes' request?

A. I did, sir.

MR. BARNES—I object to the form of the question. Let the witness state what transpired.

MR. KENNEDY—Q. How came it that you put your signature to this?

A. I was requested by a gentleman to visit Mr. Hawes' house for the purpose of signing or witnessing a will, that he said he intended to make. Mr. Putnam was that gentleman who made that request to me.

MR. BARNES—I move to strike that out as hearsay.

THE COURT—It is merely interrogatory; I will overrule the motion and give you an exception.

MR. KENNEDY—Q. Did you see Mr. Hawes sign his name to this instrument?

MR. BARNES—I object to that, let the witness state, after he went to Mr. Hawes' house, what transpired there—that is assuming a fact we are here to try.

THE COURT—He has not fully answered the first question you asked him. Let him exhaust the answer first.

MR. KENNEDY—Q. I asked what you did; what transpired; how came you to affix your signature to this instrument?

A. I went to Mr. Hawes' house with Mr. Putnam and saw Mr. Hawes. He was in bed, and called a boy that was in the room, and desired him to examine a certain coat that was hanging up and find a paper in it. The boy handed the paper to Mr. Hawes, and Mr. Hawes opened it and said he desired to sign it, that that was his will. And he asked Mr. Putnam and myself to witness it; which we did.

Q. Did he sign that then, or did he not?

A. He signed it then.

Q. In your presence?

A. Yes, sir.

Q. And in the presence of Mr. Putnam?

A. Yes, sir.

Q. Did Mr. Putnam, or did he not, affix his signature as a witness in your presence at that time?

A. He did, sir.

Q. Did Mr. Hawes, or did he not, appear to comprehend what he was doing at the time according to the best of your knowledge?

MR. BARNES—I object to that question.

THE COURT—What is the ground of your objection?

MR. BARNES—It is improper in form.

THE COURT—I think you can put it in another shape. Q. What was the condition of his mind at that time?

MR. KENNEDY—I will put it in that form. Q. What was the condition of Mr. Hawes' mind at the time he executed this will, according to your opinion?

A. As far as I could judge, he seemed to understand what he was doing.

Q. Was there any undue influence used, or misrepresentation to induce him to sign the will in his presence?

A. I didn't see anything which would indicate such a thing.

Q. If such a fact existed would you or would you not be likely to see it?

A. If there was any person acting so; I should have seen it, I suppose; if there was any person present who was controlling him I should have seen him. I didn't see any person who was controlling him. He appeared to act freely as a man would be likely to do who was signing a will in view of death.

Q. My question has reference to that particular time, to the time of signing?

A. At the time of signing I didn't see anything which would indicate any undue influence upon Mr. Hawes.

Q. Nor any fraudulent misrepresentation?

A. I saw nothing which would indicate that to me.

Q. Do you know about what the age of Mr. Hawes was at the time of his death?

A. I could only guess. I didn't know his age.

Q. It was over eighteen?

A. Yes, sir. I should say that he was probably fifty, if not a little over.

MR. BARTLETT—Q. Did the other witness sign in your presence?

A. Yes, sir.

Q. Mr. Hawes signed in the presence of both these witnesses?

A. He did, sir.

Q. And you signed in the presence of each other?

A. Yes, sir.

*Cross-Examination*, by MR. BARNES—Q. What day was this, Mr. Clarke?

A. My impression is it was the second of March; but if you will allow me to look at the will I can tell you, because it was dated correctly.

Q. Let us see what you recollect about it. You think it was the second of March. What time of the day was it?

A. About seven, or half-past seven in the evening.

Q. You say you went to Mr. Hawes' house with Mr. Putnam?

A. Yes, sir.

Q. Who let you in the house?

A. I think it was a lady that was in attendance, or seemed to be in attendance.

Q. Do you know her name?

A. I don't, sir.



Q. Would you know her again if you saw her?

A. Perhaps I might if she was dressed in the same clothes. I didn't observe her closely.

Q. Do you know Mrs. Hawes?

A. I do, sir.

Q. Was it Mrs. Hawes?

A. No sir, it was not.

Q. When you went into the house where did you go?

A. We entered the study; and having passed from the study, went into Mr. Hawes' bed-room.

Q. Was that house on Folsom street near Tenth?

A. Yes, sir, or rather an addition to that house as it might appear. It was not the main building.

Q. It was on that property?

A. Yes, sir; that was the place.

Q. You went first into the study you say; did you sit down there?

A. No, sir, I did not.

Q. Who showed you in?

A. I won't say with certainty, whether it was that lady or whether it was the boy.

Q. How old a boy?

A. About thirteen.

Q. Do you know his name?

A. No, I cannot say that I do.

Q. Do you know whether or not it was the boy who had been an attendant or errand boy of Mr. Hawes for some time?

A. I could not say that with certainty because I had not seen Mr. Hawes often previous to his death, that is lately previous to his death, recently before his death.

Q. You passed then through the study into Mr. Hawes' bedroom on the first floor?

A. Yes, sir.

Q. Who was in the room when you went in?

A. Mr. Putnam and I entered together; and the boy there introduced us, or was called in soon after. Mr. Hawes was there and nobody else.

Q. When you went to the house and saw this will, you saw nobody but this woman that appeared to be a servant or nurse, and a boy about thirteen years of age. Were any lights lit?

A. Yes, sir.

Q. Where?

A. There was a light in the study, when we went in.

Q. What kind of a light?

A. It was a gas light.

Q. What light was there in the bedroom, if any?

A. I don't recollect whether there was a light struck at that time or not; that is at the time we went into the room; but if not it must have been lighted before we went in. I think there was a gaslight burning in the bedroom.

Q. Was there any gas light burning there?

A. That is the impression that I have, but I won't be very certain about it.

Q. When you went into the room was there any light burning at all?

A. I can only give you my impression about it, sir. Think there was a light there..

Q. You don't recollect whether it was gas or candle?

A. I think there was—yes, sir, that is my impression about it.

Q. It was gas?

A. I didn't tax my mind, sir, whether it was gas or a candle. I think there was a light there. I won't say that I can give you any more than an impression.

Q. Mr. Hawes was in bed?

A. Mr. Hawes was in bed, yes, sir.

Q. How many days do you think it was before he died?

A. I think it was between a week and two weeks; perhaps ten days.

Q. What was his physical condition at that time?

A. He seemed to be weak, sir; very weak.

Q. Was he able to speak out loud?

A. He was able to speak audible; he could converse; but whether he could speak louder than that I don't know.

Q. He spoke audibly?

A. Yes, sir.

Q. You mean he spoke above a whisper?

A. Just about as your honor spoke now.

MR. BARNES—Who first spoke when you went into the room?

A. I would not state that certainty, sir; I think that Mr. Putman bid him good evening.

Q. Well, Mr. Putnam bid him good evening. What did Mr. Hawes say, if anything, in reply?

A. I could not give you the conversation that occurred.

Q. Was there any conversation—Mr. Putnam bid him good evening. What did he do then?

A. I think I bid him good evening.

Q. Did he answer back to you?

A. I think he did.

Q. What did he say?

A. I cannot give that with certainty, sir, but my impression is that he answered back in reply, perhaps, good evening.

Q. Oh, perhaps he did, and perhaps he didn't. I want to know as near as I can, what was said. You don't remember whether he answered you back or not?

A. I would not be certain about his language, sir, or even what he did.

Q. Are you certain that he bid you good evening, at all?

A. No, sir, I won't be certain about that.

Q. What was the next thing that was said?

A. As near as I can repeat what was said, it was in substance this:—

Q. I didn't ask you; you have stated already, in substance. I want to probe your recollection a little closer. What was the next thing that was said or done?

A. Mr. Hawes said that he desired to sign his will.

Q. Whom did he say that to?

A. Mr. Putman and myself.

Q. Did he look at you when he said it?

A. He did, sir.



Q. Did he address himself to you, or to Mr. Putnam?

A. He spoke to us both, sir.

Q. He said he desired to sign his will, very well; what next?

A. He told this young man, the boy that was in attendance, to look into the pocket of a coat that was hanging up, and hand him the paper.

Q. Where was the coat hanging up?

A. It was hanging—it was on the wall near the bed, or it was on a piece of furniture near the bed.

Q. Well, which.

A. I won't say which, sir. The coat was hanging up.

Q. What sort of a coat?

A. I didn't look at the coat, sir; I didn't examine, and could not tell you what kind of a coat it was.

Q. Do you mean to say that the boy went to the coat, and took the paper he showed you out of the pocket of that coat?

A. Yes, sir.

Q. You saw that, did you?

A. Yes, sir.

Q. Where the coat was you don't know; nor what kind of a garment it was?

A. It was hanging on the wall, or on a hook, or on a piece of furniture near the bed, I told you.

Q. You don't know which?

A. I don't know which.

Q. But you are positive the boy took the paper out of the pocket of the coat?

A. Yes, sir.

Q. What did he do with it?

A. He handed it to Mr. Hawes.

Q. What next was done?

A. There was a piece of red tape around it, and Mr. Hawes took off the red tape, and opened the will.

Q. Opened the paper?

A. Opened the paper, and read the last clause.

Q. What do you mean by the last clause? The last clause of the will, or the testative clause?

A. The latter part of the will.

Q. What did he read, as you remember? What was the language of it, as near as you can remember; what was it he read?

A. I could not repeat that with any degree of accuracy.

Q. I don't ask you for any degree of accuracy, farther than you are able to give. I want such accuracy as you have got on hand now, that is all?

A. I don't remember, Mr. Barnes.

Q. Then, how do you know he read the last clause of it?

A. I saw what he was doing, sir, at the time.

Q. I know you saw what he was doing, and you saw him read the last clause of the will. How do you know it was the last clause?

A. Mr. Putnam and I were standing close to the bed; we could see what he was doing.

Q. You could see what he was doing. What was he doing? How do you know he read from the paper at all?

A. I saw some of the text at the time that Mr. Hawes signed the will.

Q. What part of the text did you see?

A. I recollect seeing the name of Albert Hart. I saw some lines which were written just above the place where Mr. Hawes signed the will.

Q. What were those?

A. I could not repeat them from memory, for I didn't tax my mind with it at all.

Q. What was the substance of it? What was it about?

A. The substance of it was that this was the will of the testator, signed by these witnesses, or signed by the subscribing witnesses in his presence and at his request.

Q. That was the testative clause, and not the last part of the will; that was what he read, was it?

A. That was read, too, sir.

Q. Was that what he read?

A. My recollection is, Mr. Barnes, that he read some few lines, perhaps half a dozen lines were written above his signature, and those lines I could not now repeat.

Q. Then what did he do?

A. He signed the instrument.

Q. What did he sign it with?

A. With a pen, sir.

Q. Where did he get it?

A. My recollection is, sir, that I handed him the pen.

Q. Where did you get it?

A. It was brought by the boy, or by the young man. There was a small table placed alongside of Mr. Hawes' bed. The ink and the pen were brought.

Q. You handed it to him?

A. I think I handed him the pen; yes, sir.

Q. Did you see him write his name?

A. I did, sir.

Q. How did he write it, vigorously and well, or feebly?

A. With a little weakness, sir.

Q. Did he use any glasses?

A. I don't remember, sir.

Q. Do you remember whether he had on any glasses or not?

A. I do not.

Q. Then what was the next thing that was done?

A. Mr. Putnam signed then.

Q. What was then done?

A. I signed it, sir.

Q. Whereabouts?

A. Right over Mr. Putnam's signature.

Q. Whereabouts in the room—you are speaking about on the the paper—you were standing the last I saw of you by the bed. Where did you go when you signed it?

A. I stood right at the same place, and signed it on his little table.

Q. Did you sit down to write?

A. I do not recollect, sir.

Q. Did you see Mr. Putnam write his name?

A. I did, sir.

Q. Did Mr. Putnam see you write your's?

A. I think he did, sir.

Q. Was anything more said—you have gone through particularly—what was the next thing that was done after Mr. Putnam had signed and you signed?

A. I wished to retire; I had some other matters that I wanted to do, and I said to Mr. Hawes I hoped he would excuse me; that I would like to go. He said that I might stay awhile. I said I would rather be excused; that I hoped soon to see him out; and he said then, "you will soon see me out. When I come out it will be for a thousand years or two."

Q. What was the next thing that was said? What did you say to that proposal?

A. I said something in substance like this: that he had already rendered important service in the Legislature and otherwise, and that he might do some service yet if he should recover. He said: any good he had done in his lifetime was not worthy of mention in comparison with the good that would follow after his death.

Q. That the good he had done in his lifetime was not worthy to be mentioned in comparison with the good that he would do after his death? Go on and give us the words of it?

A. That was about all the conversation.

Q. What did you say to that?

A. I retired, sir.

Q. And you didn't say anything more?

A. No, sir.

Q. Who showed you out?

A. I went out myself, sir.

Q. Did you see this woman any more?

A. She was in the room as I went out.

Q. Which room?

A. In the outer room.

Q. In the study?

A. Yes, sir.

Q. This person who let you in was in the study when you went out?

A. Yes, sir.

Q. Did she go into the room when Mr. Hawes was lying at all while you were there?

A. I think not, sir.

Q. Did Mr. Putnam leave when you did?

A. No, sir; I left them there.

Q. Did you read over the testating clause of the will before you signed it yourself?

A. Yes, sir, I did.

Q. Do you remember its language?

A. I cannot repeat it exactly; I think it runs that the deceased was in possession of sound mind and memory, or words to that effect.

Q. Let me ask you if you read this: "Executed as above declared in the presence of us, the undersigned attesting witnesses, by the testator above named, who, according to all appearance and our firm belief, is, at the time of such signing and execution, of perfectly sound mind and memory." Do you remember that?

A. I think that was the clause.

Q. Now at the time you went there to Mr. Hawes, did you understand that Mr. Hawes sent for you to come there as a witness to that will?

A. No, sir, I did not.

Q. You went simply because Mr. Putnam asked you?

A. Yes, sir.

Q. Previous to that had you any connection with Mr. Hawes?

A. I knew him slightly.

Q. How long?

A. Oh, I have known Mr. Hawes, more or less, for ten years.

Q. At the time you went there to sign that will, or while you were there, did any doubt or suspicion cross your mind from any fact or circumstance you ever witnessed, that Mr. Hawes was not of sound mind? Did that idea occur to you at all?

A. No, sir, it did not.

Q. Did you have any idea in your mind that there was anything the matter with him, or that there might be?

A. I had no idea that there was anything the matter with his mind.

Q. Did it occur to you as at all remarkable that a man of his age and wealth should be in the condition in which you described, in that house at that time in the evening, with nobody but a woman who served him and this little boy; and that you should go there at that hour and sign that will, and find him there alone in that condition, with neither friend nor doctor nor wife; did that occur to you as remarkable?

A. From what I knew of Mr. Hawes before, it did not occur to me to be very remarkable.

Q. Why—I say why from what you know? What had you known of Mr. Hawes that should make it not at all remarkable that he should be there in that condition of solitude and friendlessness, apparently, discharging so important and solemn an act as this? Now what was there, that you knew of Mr. Hawes before that, that led you to think that was not at all extraordinary?

A. I had seen Mr. Hawes on those premises within two years; a little more than two years preceding, a number of times, and often seen him situated in the same way.

Q. Alone?

A. Yes, sir.

Q. And it didn't strike you as at all peculiar?

A. It didn't then, because I had seen him similiarly situated before.

Q. Did you, when you told him after you had signed the will, and that you hoped he would soon come out, and he replied to you that when he went out, that you would see him come out, and when he went out, he would stay out for a thousand years or so; did that occur to you as a remarkable declaration on the part of a man in his situation?

A. It did occur to me as remarkable, sir.

Q. In what respect?

A. It seemed to me to be a bold expression in view of death.

Q. What do you mean by a bold expression?

A. I believe that most men hesitate to die, and that expression of Mr. Hawes didn't seem to exhibit any unwillingness to die; and, in that respect, I thought the expression was a bold one.

Q. How do you mean it did not exhibit any unwillingness to die, when he said I will come out, and when I come out, it will be for a thousand years or so—what did you understand him to mean by that, if anything? What idea did that convey to your mind?

A. It conveyed this idea, that he would only be carried out from his house, and when he was taken out, he would be taken out dead,

and this absence from his house would be for a thousand years, or longer, or an indefinite time.

Q. That was the only idea. Now didn't it occur to your mind that that was a very peculiar remark for a man to make, as you supposed in a dying condition, soon to go?

A. It was peculiar, sir.

Q. That was the only remark that he made about the future is it, at all, to you?

A. Yes, sir.

Q. And from that he proceeded to speak of what he had done for mankind in his lifetime. What did you allude to in what you spoke of; did he mention anything particular that he had done for mankind?

A. No, sir.

MR. BALDWIN—I didn't understand him to say that Mr. Hawes claimed that he had done anything in his lifetime. What was said, was called forth by a remark of the witness. The witness spoke of the good he had done, and he answered right after that.

MR. BARNES—I understand him to say that Mr. Hawes then said that all he had, all the good he had done in his lifetime—that is the substance; I don't give the exact language—would be eclipsed by what he was going to do after his death.

A. In substance, that is the reply.

Q. What did you say about the good he had done?

A. I said to Mr. Hawes that he had performed some useful service in the Legislature and otherwise, and that I hoped that he would recover his health, and get out again; and he replied that the good he had done, or any good he had done in his lifetime, was not worth mentioning, in comparison with the good that would be done through him after his death.

Q. Did he tell you what that was?

A. No, sir, he did not.

Q. When was it, at what point of time during this interview you have been going over was it, that Mr. Hawes requested you to sign the document?

A. It was before he had signed it. He stated before he signed it, that he desired to sign his will in the presence of us who were there—Mr. Putnam and myself as witnesses, and requested us to sign it after him.

Q. He made that specific request?

A. In substance that, sir.

Q. Can you remember his language?

A. I would not undertake to do so, Mr. Barnes. It is some six or eight months ago, and I didn't tax my memory with the words which were then spoken.

Q. It didn't make any particular impression on your mind?

A. No, sir.

Q. Did you know what he meant when he said that any good that he had done in his life was nothing in comparison with what he would do after he had gone?

A. No, sir; I didn't know what he meant then.

Q. You didn't ask him?

A. No, I did not.

Q. Then you went away?

A. Yes, sir.

Q. You saw nobody else ; and Mr. Putnam remained ?

A. Yes, sir.

A JUROR—Q. What was the exact position when he signed the document ?

A. His position, my recollection of it is, he sat up in bed, or that he was supported by pillows. He was in bed and had been reclining—he didn't get out of bed to raise himself up and sign the document.

Q. Did you hold the paper for him to sign it ; or did anybody hold it for him to sign it, or did he write on his knees ?

A. I think that a book was handed to him, on which he placed the will, and wrote in the book.

MR. PRATT—Mr. Barnes asked you directly, didn't you understand Mr. Hawes to mean, when he said he would be gone a thousand years, and you answered—I believe that you stated, it conveyed the idea that he would be carried out of his house and would remain away a thousand years ;—was that the only idea that presented itself to your mind as to his meaning ? Did anything else occur to you—a thousand or two years ?

A. A thousand years or two.

Q. You understood him to convey the idea that at the expiration of that time he would return ; was that the idea ?

A. No ; that idea didn't strike me.

Q. All that you inferred was that he would simply go out of his house dead, and would remain a thousand years or two ; was that the only idea which the remark brought to your mind at that time—the idea that that remark conveyed to your mind was that he expected to die and nothing more ?

A. Nothing more.

A JUROR—Q. With the permission of your Honor I would like to ask the witness one question : Q. Was the will read to Mr. Hawes before he signed it ?

A. The whole of the will was not read.

Q. Was the will read in your hearing ?

A. No, sir, it was not.

Q. Did he read it himself ?

A. The whole of the will ; no, sir.

Q. Did Mr. Hawes read any of it aloud ?

A. He read the last few lines of the will before he signed.

S. N. PUTNAM, called on behalf of executor, sworn.

*Examined by Mr. KENNEDY.*—Q. I will ask you whether you ever saw that instrument before [showing a paper] ?

A. That is my signature.

Q. Have you seen that instrument before ?

A. Yes, sir.

Q. That, you say, is your signature ?

A. Yes, sir ; that is my signature.

Q. What does that purport to be, that signature there ?

A. That is the signature of Horace Hawes, deceased.

Q. And this signature here—the words “ Alfred Clark ” there—have you seen that before ?

A. Yes, sir ; I have seen it.

Q. This purports to be the last will and testament of Horace Hawes ?

A. Yes, sir.

Q. Did you see Horace Hawes sign that ?

A. I did, sir.

Q. Please state to the Court and jury the particulars of signing this—the attestation and the execution of the will ?

A. I was called by Mr. Hawes on the evening of the second of March. I received a note from him—

Q. [Interrupting] What year ?

A. 1871. I received a note from him requesting me to come to his house, and bring with me some responsible man. I resided on Howard street, near Eleventh. I called at a number of places before I found any one that could go with me. I found Mr. Clark after calling on the others, and he went with me to Hawes' house. We were met at the door—I have forgotten whether it was by a woman or a boy. The boy, at least, conducted us into Mr. Hawes' bedroom from the study where we were ushered in. I spoke to Mr. Hawes, and he answered. He said, "Good evening." He told us that he had called us there for the purpose of witnessing (?) his last will and testament, and ordered the boy to go to a coat that was hung at the head of his bed, near a door, and take from the pocket this document. The boy did so, and I took a candle and a blank-book from a table, and took it to his bed; and he opened the document, and read to us a certain clause, and requested us both particularly to witness the signing of his name, which we did. He laid the document on the book I handed him, to subscribe his name to it, and we both saw it, and signed our names as witnesses.

Q. Did you do this in the presence of each other ?

A. Yes, sir.

Q. And in the presence of Mr. Hawes ?

A. Yes, sir.

Q. Did there appear to be any undue influence or fraudulent misrepresentation used to induce Mr. Hawes to sign that will ?

A. Nothing of the kind that I saw or heard?

Q. No coercion ?

A. Not in the least.

Q. Did the act appear to be free and voluntary ?

A. Yes, sir.

Q. What time of the day was it ?

A. It was between seven and eight o'clock in the evening.

Q. At his residence, was it ?

A. Yes, sir; on Folsom street.

Mr. BARTLETT—What was the condition of Mr. Hawes' mind at the time the will was executed?

Mr. BARNES—I suppose he knows.

A. From what we saw that evening, I did not notice anything unusual.

Q. Did he appear to understand what he was doing ?

A. I should judge so.

*Cross-examination by Mr. BARNES*—Q. How long had you known Mr. Hawes ?

A. I have known him since the Spring of 1866.

Q. Where did you make his acquaintance ?

A. In this city?

Q. In relation to what business, if any, or socially ?

A. A few months after I became acquainted with him, he came to



my office and told me that he would like to lease me a portion of this property in this city, Block 44 particularly.

Q. What is the block bounded by?

A. By Ninth and Tenth, and Bryant and—Harrison; I believe that is correct.

MR. BARTLETT—Block forty, did you say?

A. Block forty-four.

Q. Between Ninth and Tenth?

A. Ninth and Tenth, Bryant and Harrison.

MR. BARNES—He wanted you to lease it?

A. Yes, sir.

Q. What for?

A. Well, for any purpose that I saw fit. He said he would lease it to me on such terms that would be profitable to me, and he told me that he would put his proposition in writing, and submit it to me within a few days.

Q. Did he?

A. I told him to do so. Yes, sir; he did so.

Q. Have you got that proposition?

A. I have not. I did not accept the proposition, neither did I take the statement.

Q. From him?

A. No, sir. He called me to his house on Folsom street.

Q. [Interrupting.] What was his proposition?

A. Well, I don't remember the exact terms of the proposition, but it was a very one-sided institution, so much so that I could not accept it.

Q. I was going to ask you whether it was in your favor or his?

A. No, sir; not at all; not in my favor.

Q. That ended that business?

A. That ended that business.

Q. Did you visit him much at his house?

A. Occasionally; yes, sir.

Q. Did you go there of your own accord, or when you was sent for?

A. Never, except when he sent for me.

Q. Whom did he send for you?

A. Sometimes he would send by a boy, and sometimes by other parties, as might happen.

Q. What were his usual hours for sending for you?

A. At night, usually.

Q. What did he want with you?

A. Well, he wanted to talk on various subjects. On the occasion I last spoke of, it was on business.

Q. What kind of business?

A. Well, on the business I have explained in regard to leasing the property; that occasion.

Q. During these visits that you made him, did you observe any peculiarities in his manner or conduct, different from that of a gentleman in his house, entertaining other gentlemen who call upon him on a friendly visit?

MR. KENNEDY—I don't know that that is cross-examination. The only questions we asked him were with reference to what occurred at one visit.

THE COURT—I will overrule the objection.



MR. BALDWIN—The objection was taken that it was not cross-examination at all. If it is to be regarded as a cross-examination, of course the rule is, that it must be confined to matters brought out on direct examination. I don't know of any different rule applying here to what would apply to Courts of general jurisdiction. If that rule were applicable, then of course, this witness must be the witness of the contestant, for the purpose of bringing out these matters.

THE COURT—I would have been very glad to hear you before I made the decision, but I have decided the point. I cannot decide a case, and then have a re-hearing applied for immediately.

MR. BARNES—If there should be a re-hearing granted, my idea is simply this: I understood the witness to say that when he was asked if he saw anything unusual in him, he said no. Now, I am going to see what he considers usual, or unusual, in Mr. Hawes. Let us see what reason he has for saying so, and what modification perhaps he might make, in addressing himself to the intelligence of the jury, as to what is usual, or unusual. I suppose if the witness should go on and say, that when he spent the evening with Mr. Hawes, that that gentleman spent the time in turning, what are familiarly known as “flipflaps” in the saw-dust profession, that that would be something unusual.

THE COURT—I can readily understand there are questions that cannot be argued in the presence of the jury.

MR. BARNES—I merely stated that to explain to Mr. Baldwin. Answer the question, please.

A. Do you confine it to any particular occasion when I called on him? Do you wish me to answer that, or generally?

Q. Generally.

A. Generally, he was rather peculiar in his conduct.

Q. In what respect?

THE COURT—Now, I will stop you there, Mr. Barnes, unless you make him your own witness.

MR. BARNES—At the time you signed this will, did you entertain in your own mind, either from what you observed then, or what you previously knew of your own knowledge, any doubt, or suspicion as to Mr. Hawes' mental condition?

A. Yes, sir; I did entertain a doubt, or suspicion, as regards his condition.

Q. What was the nature of that doubt or suspicion?

A. What gave rise to it particularly on that occasion was, the reading by him of the last clause, I think it was the last clause of his will. It was so peculiar, that I remarked on it a few days afterwards.

Q. You are a lawyer by profession, are you not?

A. Yes, sir.

Q. I will ask you how long have you been at the study and practice of law?

A. About five years.

Q. I will ask you, if in your experience, or in the course of your studies or observation, you ever knew a will to be drawn with an attesting clause in the form in which that is put?

A. Never.

Q. Apart from the peculiarity of this attestation clause which Mr. Hawes read, did you have on that occasion, either upon what you then saw, or from what you had previously known of it, any doubt or suspicion with reference to his sanity, or otherwise?

A. Nothing more than I had entertained for some time.

Q. You had entertained an opinion with reference to his sanity for some time, had you?

A. Yes, sir.

Q. Founded upon your intercourse with him?

A. Yes, sir.

Q. And that opinion remained unchanged at that time, whatever it was—is that correct?

A. Well, I cannot say that exactly ; he was so peculiar, that sometimes in talking with him on some subjects, a suspicion would arise, and talking with him at times on other subjects, I saw nothing different from what I would in talking with you, or any other person.

Q. On what class of subjects, do you mean that it appeared to you he was not right?

A. I never had much conversation with him excepting on business matters, or in relation to a certain monument that he had talked to me a great deal about ; those were the two leading subjects of his conversation with me.

Q. Without going into these conversations at present, under the intimation of the Court, I will ask you if those conversations produced an impression upon your mind with reference to his mental condition?

A. It produced an impression to this effect ; that he was a very singular man—singular ideas. What it amounted to, I was not able—I was not able to decide.

Q. Did it produce an impression on your mind—from what you said and heard, did or did not a suspicion cross your mind with reference to his being a man of sound intellect?

A. I have sometimes thought that there was a question—there was a question in my mind.

Q. Haven't you more than once, during Hawes' lifetime, and before his death, stated your belief that he was out of his mind?

A. I have made that remark—yes, sir.

Q. Had you seen anything in him from the time you formed this impression, up to the time you went there in company with Mr. Clarke, to witness this instrument—seen anything to change that opinion?

A. I don't know that I have.

Q. Did it occur to you, sir, as at all peculiar that a man of Mr. Hawes' position and wealth, should be at that hour of the night, alone in his house, to all appearance without either physician, or legal adviser, or wife, or friends, to stand by and see him perform the last solemn act that a man discharges in life, with reference to an estate as large as this—did that occur to you as singular?

A. It occurred to me as singular ; but still, it was, in another sense, not singular, so far as he is concerned—so far as my experience with him had been.

Q. Why? Had he been in the habit of living in that way?

A. Yes, sir.

Q. What was his physical condition?

A. He was very low.

Q. Did you yourself regard him as about to die?

A. Yes, sir.

Q. Did you entertain any doubt at all that he was passing away?

A. None, at all.

Q. Did you hear the conversation which Mr. Clarke has testified to, when Mr. Clarke, probably with more or less sincerity, said, he hoped he would soon get about again—did you hear that conversation?

A. Yes, sir; I heard that.

Q. Did you hear Mr. Hawes reply, yes, he should go out, but when he went out, he should stay out for a thousand years or two?

A. That is what he said.

Q. Did that remark, coming from a man of his supposed intelligence and understanding, strike you as at all peculiar?

A. Well, only ——, none particularly peculiar in that particular case. If it had been said by you, I should take it as being very peculiar.

Q. But it did not strike you as peculiar, coming from him?

A. No, sir.

Q. Did you hear the rest of the conversation between Mr. Hawes and Mr. Clarke?

A. I think I heard everything that was said.

Q. Did you take any part in it?

A. I think I did not.

Q. How long after Mr. Clarke went away did you remain?

A. We both started to go, and Mr. Hawes requested me to remain awhile. He wanted to talk with me. I remained over an hour, perhaps two hours. He often sent for me to come and remain with him a few hours in his sickness.

Q. What was the topic of conversation between you and him that night?

A. He commenced the conversation by asking me if—asking me what men said of his doings—the foundation of the Chamber of Industry, etc.

Q. He asked you what men said about the foundation of the Chamber of Industry?

A. Yes, sir.

Q. What did you tell him?

A. I told him so far as I had heard any expressions, it was favorable, and glad to see such institutions founded.

Q. What did he say?

A. Well, he said it was a good thing, but nothing compared with his last great act, that he had just about consummated.

Q. Did he tell you what that was?

A. Yes, sir.

Q. What was it?

A. It was the foundation of the Mont Eagle University.

Q. Well, after you got through, what did he say about that?

A. He said that it had been a study with him for years, and that he had founded an institution that would be more perfect, and would outlast any institution of the kind ever founded on the American continent; that it was the perfection of all such institutions; he said that it would be so great and powerful, that it would attract scholars from all parts of the earth, and around it would congregate the wisdom of the whole world.

Q. What else?

A. He said a great many things; I don't remember everything, but those were remarks he made, and he said this: Said he, "now I want you when this document is published, to read it with the greatest care and study it, for it will bear studying by the greatest minds, and will take the greatest minds to comprehend it." He said there was

language there that would do for me, or any young man to imitate, and that it would be treasured up as a document of great importance, or something like that.

Q. How do I understand you to mean? that it was the finest language, as a literary effort, that ever had been uttered, or what?

A. He said that I would find language there such as I had never read, that would be worthy of imitation, and studied by the greatest minds, and so on.

Q. How long did he talk in this strain?

A. Well, he would talk a few minutes, and then rest a few minutes, and I would talk to him.

Q. How long, with these breaks, did this continue?

A. Probably an hour and a half, perhaps nearer two hours. I was there over an hour, I think, after Mr. Clarke left.

Q. Was that the final—his last word to you, that this would bear the study of the finest minds?

A. No, sir.

Q. How did you leave him?

A. Well, when I got up to go, he says, "Now, probably, I shall not see you many times more, but," said he, "I will tell you this, that after I am dead, and when the damned vampires gather around, they will find nothing but dry bones to pick." That is about the last remark made to me.

Q. And then you went away?

A. I went away, yes, sir.

Q. During all that evening, that hour and a half, or two hours of conversation that you had with him, did you see anything of any member of his family?

A. No, sir.

Q. You knew Mrs. Hawes personally?

A. Yes, sir.

Q. Do you know, whether or not, she was there at that time?

A. She was not in the room.

Q. You don't know whether she was in the house or not—at all events, you did not see her?

A. She was not present. I don't know, positively, whether she was there or not.

Q. The only persons you saw were the nurse and this little boy?

A. Yes, sir; the little boy was the only one in the room with him.

MR. PRATT—You spoke of the attesting clause being a very peculiar one. Do you recollect its peculiarity now? What is the peculiarity to which you refer?

A. The clause itself, the whole clause, that he should want an averment of us in regard to his sanity. That is all that struck me as peculiar, something I had never seen.

Q. It is your firm belief that he was then of perfectly sound mind and memory; is that what it says?

A. Yes, sir.

Q. You signed that averment then?

A. I witnessed the will, yes, sir.

Q. At that time, then, at the time you witnessed the will, your impression is what is stated here, that he was perfectly sound, mind and memory?

A. No; I did not say that.

Q. You say then, that the attesting clause that you subscribed is not true ?

A. I have not said that either. I say there was a question in my mind, and had been for some time.

Q. As to his mental condition ?

A. Yes, sir.

Q. Now let us understand a little more fully what you mean by that. You say there was a suspicion in your mind as to his mental condition ?

A. Yes, sir.

Q. Do you mean that you suspected that he was *non compos*, unsound, under delusion, or merely that he was exceedingly eccentric, and peculiar in his ideas ?

A. I always knew that he was very eccentric, and the question arose just on those great peculiarities, whether they were peculiarities, or whether they were unsoundness of some type or other.

Q. That was the extent of your suspicion ?

A. Yes, sir.

Q. You spoke of Mr. Hawes saying to you that that was a remarkable document, and would bear the inspection of the greatest minds, and would require the greatest minds to comprehend it ?

A. Yes, sir.

Q. Did he refer then to the will you had then attested, or to the deed of foundation ?

A. The deed of foundation is what I was speaking of ; yes, sir.

MR. KENNEDY—Mr. Hart, the executor, is not present. He will be here in a short while. I wish to prove by him the value of the estate.

MR. BARNES—We will admit the facts with reference to the value of this estate, as set forth in the petition ; that he died in San Francisco, and was a resident here, and that Albert Hart is named as executor, and is willing to take the trust upon himself. There is no issue before the jury on that proposition, and it is only for the purpose of removing any doubt, that we will admit the facts with reference to life, death, and estate, as stated in the petition, and either of us may use the petition as admitted facts.

J. D. B. STILLMAN called for Executor. Sworn.

*Examined* by MR. BALDWIN—Q. What is your profession ?

A. Physician and surgeon.

Q. How long have you practised ?

A. Twenty-five years.

Q. How long have you practised here ?

A. Since 1861 ; since the flood in Sacramento.

Q. And in the State, how long ?

A. Twenty-one or two years, except what time I have been out of the State, temporarily out of the State.

Q. Did you know Mr. Hawes in his lifetime ?

A. I never knew him intimately before I was called by him, though I saw him, and my attention was drawn to him about the time he was elected to the State Senate first.

Q. You were speaking of the time when you were called to him—when was that, Doctor ?

A. I was summoned to him about two years before his death first, for an opinion as to the nature of his disease.

Q. How long were you with him in consultation, or otherwise, at that time?

A. About an hour. John Cammet called me to him, and I examined him. It took about fifteen or twenty minutes to make up my opinion as to the nature of his disease, and we continued in conversation for the better part of an hour, upon subjects disconnected from the disease.

Q. Was that previously to his departure for Europe, Doctor?

A. It was previous to his departure for Europe, previous to his going to Europe. I told him that he had chronic phthisis, or tubercular disease of the lungs; that he might by traveling, and placing himself under favorable hygienic conditions, he might live for years, and he might at any time, by complications, which he could not prevent—he might not live but a few days.

Q. Well, we will pass now to the next time when you met him, were you in your capacity—

A. That was two days before his death. I was sent for to see him. He was not expected to live then a great while, and he demanded of me that I might stay by him as long as he lived, and would not let me leave him for a minute.

Q. Did you do so?

A. I did, sir, except when I left by his consent, or at his request.

Q. How long was it that you were with him, immediately previous to his death?

A. I cannot tell the number of hours; I was with him two nights, and the better part of two days, to the best of my recollection.

Q. Were you with him at the time of his death?

A. I was with him at the time of his death. The morning of his death he wanted to see Mr. Hart, and he sent a boy after him. The boy returned and said he could not find him.

Q. Who?

A. Mr. Hart. I told him I thought I could—I thought that Judge Sawyer could tell me where to find Mr. Hart. I think it was Sunday morning. It was an unusual time to find a man, and Mr. Hart lived across the Bay. He asked what Judge Sawyer I meant, in rather a crusty manner. I told him Lorenzo Sawyer. Said he, "Yes, San Francisco has produced one eminent lawyer by the name of Sawyer, and as acknowledgment of it, they have made all the Sawyers Judges."

Q. I did not wish to bring that out at all. I would like to call your attention to the time when you were first called to his bed-side?

A. On this last occasion.

Q. On the last occasion, when you were first called to his bed-side?

A. I cannot tell you the hour or day.

Q. Never mind the hour, but direct your attention to the circumstances and what took place, I mean for the express purpose of determining his physical and mental condition, particularly his mental condition?

A. There was nothing in his mental condition particularly, that struck me, except his irritability as one of the characteristics—his dogmatic manner—impatient.

Q. When you first met him, did he ask you to examine him?

MR. BARNES—Let him get through with one answer. We are trying to get it down here. You don't give him time to finish his answer.

MR. BALDWIN—He is varying from what I think is important.



MR. BARNES—It don't vary much from what I regard as important.

MR. BALDWIN—I am willing that the Doctor should state everything, and I will not ask him any questions, only commence at the first, and state it—not very much in detail; do you want it?

MR. BARNES—The Doctor is over twenty-one; he understands what he should say. Go on, Doctor.

A. I cannot state any more than that, that I think would be of importance as to his mental state.

MR. BALDWIN—Did you have, during the time that you were with him—did you have much, and if so, how much conversation with him?

A. He was too feeble. I would not allow much conversation with me, and would not hold much conversation with him. He was too feeble to have much conversation. He talked very freely with me and with others who were present, when his strength allowed, but he seemed to have arranged everything in his own mind, his business affairs satisfactorily, and had very little to say about those. Two years before when I saw him, he spent a half an hour in talking about his project for a University, the foundation of a University, but on this occasion, he said very little to me about it.

MR. BARNES—What was that?

A. Two years before, when I visited him, he had a good deal to say about his project of founding a University, and I advised him then, in view of the uncertainty of his life, that he should execute it while he lived, and not postpone it.

MR. BALDWIN—I would like to ask your knowledge—if you derived sufficient knowledge from Mr. Hawes during your last interview with him of two days, so as to be able to determine the condition of his mind, his soundness or unsoundness?

A. The question never arose in my mind as to the soundness of the man's mind. He seemed to me a remarkably clear-headed man always, even to the last act of his life; as long as he could speak, he spoke intelligently and consistently.

Q. What do you allude to, Doctor, in referring to the last act of his life?

A. The last act that I recall, was the calling for the statement of his agent at Redwood City, who was building some house for him, or some houses for him. He called his wife to read him the report, the weekly report. She sat by his bedside to read, and she read in a very high key, in a falsetto voice. He begged her to drop her voice lower, and not read so high; it was disagreeable to him. She began again to read it in a lower tone, a natural tone of voice, but immediately arose again to the high key, which offended him, and he told her, begged her not to read so sharp; to speak more pleasantly, and he then calculated—took the paper, and calculated the amount of wages due the men, and inquired of his wife, whether a certain man who had wages set opposite his name, was a carpenter or laborer, to see whether the proper wages had been allowed him. He estimated the amount due, and said it was all correct, and asked for the check-book, which his wife brought him, and he signed it, she holding his hand while he signed it. That was the last important act of his life. What he said afterwards, I have no recollection particularly of.

Q. Can you fix the time when Mr. Hawes requested you to examine him, and give an opinion concerning his case?

A. It was in March, two years before the March in which he died. I think it was in March.

Q. That would be March, 1869, would it not?

A. Yes, sir. That would be 1869.

Q. Where did you see him?

A. I saw him at his house. The same room in which he died.

Q. At whose request did you go there?

A. John Cammet.

Q. What did Mr. Hawes require of you when you went there?

A. He required of me to examine him and tell him what was the matter. What was the nature of his disease.

Q. What did you do to him?

A. I examined him physically, examined his chest particularly, where I found the source of his disease—tuberculous.

Q. You found that he had what is called tuberculous?

A. Yes, sir. Tuberculous.

Q. After you had completed the examination, you say that you wrote him an opinion. Did he require that of you—a written opinion.

A. I do not say I wrote an opinion, I think.

Q. I thought you said you were there about an hour, and part of the time was occupied in that?

A. No, sir; I examined him, and afterwards we were engaged in conversation not connected with this case; though I did after I left the house. He sent John Cammet to my office for me to give my opinion in writing, which I did, and which is now in the possession of his family. I found during my last attendance while sitting there, I found his journal in which he had kept the history of his case, and my opinion written there, pasted in, and a dozen other physicians he had consulted.

Q. He had been to nearly all the doctors in town of any eminence, at one time and another?

A. Yes, sir; and never had much confidence in any.

Q. After that visit, did you prescribe anything for him?

A. No medicine; I prescribed general hygienic remedies.

MR. BALDWIN—This book that the witness has alluded to, the best description that I can give of it is that given by the witness. I wish to have it produced. The doctor can describe it, and if undertook to describe it in a notice, as required by the statute, I would not be able to give as good a description as that.

MR. BARNES—Why did not you give notice of it?

MR. BALDWIN—If the notice is not reasonable, you can take advantage of that. That depends upon how long the trial lasts. You were entitled to reasonable notice. It is the first time I learned that there was such a book.

MR. BARNES—If there is nothing more, I will go on with the examination. How did he express himself to that, with reference to his disease, when you saw him in March, 1869?

A. He was skeptical as regards the correctness of my opinion.

Q. He did not think you knew what you were talking about?

A. He did not think I knew that I could tell what was the matter with him. He said that I differed very much from other physicians that had examined him.

Q. Did he tell you how many had examined him?

A. No, sir.

Q. Did he tell you who had examined him?

A. He told me that Doctor Morse had examined him a few days



before, and that he had not consumption. Doctor Morse's opinion I saw pasted in the book.

Q. You wrote an opinion after you left the house. Did you send it to him?

A. Through the hands of John Cammet.

Q. You gave it to John Cammet?

A. Yes, sir.

Q. Did Cammet for Mr. Hawes ask you for a bill?

A. Yes, sir.

Q. Did you render it?

A. He paid the fee and took a receipt therefor.

Q. Do you remember what the form of the receipt was?

A. No. I do not know that he worded it himself, the receipt. I may have written the original receipt myself, though I am not sure.

Q. Did not he require, in addition to your receipted bill, another receipt in a peculiar form—required by Mr. Morse?

A. I do not remember that he did.

Q. You are the only one that did not. It was simply a receipt for your bill. Now how long was it after March, 1869, that you were called to see him again?

A. It was very near two years.

Q. Within two days of his death?

A. Within two days of his death.

Q. Do you know how many doctors he had had in the meantime?

A. No, I do not.

Q. Who had been his attending physician during his last sickness up to the time that he was in *articulo mortis*?

A. Doctor Bennet was there. Doctor Forgeaud and Morse. All three, and who else, I do not know.

Q. Do you know who had been his attending physician during his illness?

A. No one who had been there, could be considered as an attending physician, because he was captious, and changed them.

Q. Can you state, whether from consultation, either at his house, in his presence, or in any other way, whom you could say was his attending physician during his last illness?

A. No. He did not accept of anybody as his attending physician—he considered as such. He was willing to get the opinions of the physicians, but he used his own judgment as to whether he would follow their advice or not.

Q. Have you information as to how long he had been sick abed, confined to his house and room, at the time you went there, two days before his death?

A. No, I have none. If I did know at the time—I probably did know at the time, but I disremember now.

Q. Do you not know that Doctor Bennet had been his attending physician?

A. I knew he had been there, but he did not recognize any man as his attending physician. He told me he did not recognize—

Q. When?

A. He told me this when I came there the last time.

Q. Did he give you no reason why he had sent for, particularly, just as he was going into the grave?

A. He said that he was now satisfied that my opinion, given two

years before, was correct, and I concluded that he called me because of that.

Q. Who came for you to go?

A. I do not remember who called me.

Q. Now let me ask whether you did not go there at the request of the Rev. Mr. Stebbins?

A. I do not remember that it was, sir. I think I came in the usual manner of a call on the slate.

Q. Do you remember, whether or not, Mr. Stebbins requested you to go there?

A. I do not remember that he did. I do not think he did.

Q. Before, or at about the time you went there, two days before his death, did you have a conversation with Mr. Stebbins, with reference to Mr. Hawes?

A. No, sir; I had no conversation with Mr. Stebbins.

Q. Then I understand you to swear that you do not know who it was that came for you to go?

A. I think it was a call on the slate. That is usually the way I receive calls, and I have no recollection of any other method of being called, I think. The notice was on the slate to go to Mr. Hawes.

Q. No one ever called for you to go?

A. No, sir. I do not remember any one telling me, or calling for me.

Q. You do not connect your visit with Mr. Stebbins, at all?

A. No, sir.

Q. What time of the day was it that you got to Mr. Hawes' house?

A. I cannot remember that—in the forenoon.

Q. I ask you generally?

A. I think in the forenoon; I won't be certain.

Q. Who was there when you got there?

A. His wife was there for one; I do not remember who else. I saw several there very soon afterwards during the day; but I do not remember whom I saw when I came there.

Q. Were there any physicians there when you arrived?

A. No, sir. No physicians there.

Q. Did any physician arrive there during that day?

A. No. I saw no physician while I was there, but myself.

Q. Do you remember the day of the month when he died?

A. I do not.

Q. You are certain it was two days—the forenoon of the second day before his death, that you were there?

A. I am quite certain of that.

Q. Then you were there the better part of three days and two nights?

A. No. It seems to me the better part of two days and two nights. I was there two nights, and the better part of two days.

Q. Do you remember about what time of the day it was he died?

A. About the middle of the afternoon. I made a memorandum in his journal, personal journal which he kept, as he had kept that journal, evidently from the handwriting, up to the time that he could write. After his death I finished the memorandum, detailing the circumstances of his death—his condition—and that record was fuller than I can remember it, because it was fresh on the same day, all the circumstances fresh, and I endeavored to give a full statement of the circumstances attending his death as I could, as a matter of history.

Q. I understand you to say, Doctor, that his physical condition was extremely feeble, when you were called there a day or two before he died?

A. He was feeble.

Q. Did you regard him as dying then?

A. No, sir. He was not a dying man, but he might—I was told by them in the house, they thought he was dying, but I thought he might live for several days. It is hard to form an opinion.

Q. Had you ever, subsequent to the time you went to examine him, sometime in March, 1869, up to the time you went there, two days before he died, been at his house much?

A. I never had seen him at all.

Q. Did I understand you that at the time you visited him there, you regarded him as a man of sound mind?

A. I never questioned the thing. The question never had been raised in my presence, nor had I seen anything to make me think otherwise.

Q. Have you had anything to do in your practice, as a specialty, of the subject of insanity?

A. No. I have never made a specialty of insanity.

Q. You never have been connected in any way with any institution for that class of unfortunates?

A. I have been called upon by County Judges to pass upon cases of insanity, whether they were insane or not, and on my judgment, men have been sent to Stockton.

Q. Did you observe any peculiarities in Mr. Hawes, other than those which most of us possess?

A. Yes, sir.

Q. What were they?

A. He was an irritable, ill-natured man. A man that I would not attend, except—

Q. I am talking now, just about the two days that you were there, because you saw him only once.

A. I intended to tell you the impression I had of the man, and my personal acquaintance with him on those two days. It was in perfect keeping with what I had seen before of him; a self-willed and conceited man, who thought he knew more than all the rest of the world, and a very disagreeable man to have anything to do with.

Q. When you went there the second day before he died, and went in the room, was Mrs. Hawes there at all?

A. I think so, she was there most of the time while I was there.

Q. What was his manner and demeanor toward her?

A. I have endeavored to recall that matter from what I have heard since the death, and I must say that except in one instance, it was kind. When I first went to his bedside I put questions to her with reference to his condition for the last few days before my visit, and he said “Don’t talk to her. Talk to me.”

Q. He said “Don’t talk to her. Talk to me”?

A. “If you have any question to put, put it to me. Don’t put them to her.”

Q. How did he speak? In the tone in which you speak, or in a tone of great excitability and irritability?

A. He spoke in a tone of disrespect.

Q. Towards whom?

A. Towards his wife.

Q. Was it anything more than mere disrespect?

A. No. I could not say that it was. It was to give me to understand that he was competent to answer any questions himself, and I need not ask his wife or anybody else what I wanted to know.

Q. I understand you to say that your opinion with reference to his sanity is simply founded upon the facts which you have stated as from your personal observation?

A. Yes, sir.

Q. Did you have any conversation at all with Mr. Hawes, about his wife?

A. Never.

Q. You never discussed that topic with her at all?

A. Never in the slightest degree.

Q. Did he ever make any charges against his wife, to you?

A. None at all. He said to her just before his death—she was over his bed waiting upon him in some way, and he said—he spoke very kindly to her—he said, “You are all right,” which at this time, I never had heard of any unkindness, or anything of the kind, and I remember that little circumstance as operating upon my own mind, to show that he was sometimes, if not always, he was sometimes kind.

Q. He was sometimes kind. How was her manner and demeanor towards him?

A. It was becoming. I do not remember anything that was especial about it. I saw nothing that struck me as unpleasant or unbecoming a wife.

Q. During those two days that you were there, did anybody have any conversation with her, or ask your opinion or view, with reference to his mental condition?

A. No one asked me any questions about it.

Q. When was the subject of his mental condition first brought to your notice?

A. Through the papers.

Q. That is the first time you ever heard anything of it?

A. That is the first time I ever heard anything about it, if you mean by mental condition, any question of his insanity—about his peculiarities, eccentricities of character. I suppose—

Q. Did Mr. Hawes ever manifest to you any disposition of hatred, jealousy, or supposition of his wife's virtue?

A. I never dreamed of such a thing.

MR. BARNES—Q. Did he ever speak to you on the subject of being poisoned or assassinated?

A. Never anything of the kind, either the first or second visit. I never heard of it before, and never thought of it.

Q. Did he ever say anything to you with reference to knowledge that he had obtained, concerning the posterity of his children?

A. Nothing of the sort.

Q. Did he use profane or indecent language during the days that you were there?

A. Not a word.

Q. During that time, was he in condition to get out of his bed?

A. I do not remember whether he ever got on to his feet, but he sat up.

Q. Was he out of bed during those days that you were?

A. I cannot remember that; he must have been though; he must have been up.

Q. Did he exhibit any peculiarity, violence of temper, or rudeness to anybody, except this single occasion?

A. That single remark is the only thing that showed rudeness towards anybody. He seemed to be aware—

Q. Did he say anything to you, with reference to his willingness or unwillingness to take nourishment, or food?

A. No, sir. He frequently called upon his wife to furnish it to him, which she always did, and he took it.

Q. Was there anything in his manner or in any of his acts which indicated a want of personal decency, during the time you were there?

A. No, sir. Nothing of the kind.

Q. Then in point of fact should there be any facts with respect to him of a nature concerning which I have indicated, you know nothing about it?

A. No, sir. I know nothing about it.

Q. And your opinion here, that he was a man of sound mind, is based solely upon what you saw, and in reference to the circumstance, or any of the circumstances of the facts, the circumstances of which I have named to you?

A. That is so. I would not profess to be governed by anything which I heard mentioned; I said that I saw nothing that raised a suspicion, and there has been no question raised in my mind.

Q. You never touched upon the subject of the relation of his wife with him at all, did you?

A. Not at all.

Q. I want to ask you the general question, Doctor, growing out of your observation and experience among people who are afflicted with mental disturbances of one kind or another, have you ever known cases, either from observation or reading, in which a man's mind was disturbed upon one topic or one set of topics, and exhibit none of the characteristics of insanity except when that particular train of thoughts are treated upon?

A. Oh, yes. Cases of monomania.

Q. What are they called. What is the term which science applies to those?

A. I said, what we call monomania.

Q. Is not that often accompanied by keen reasoning powers, intelligence, and observation?

A. Yes, sir. On other matters.

Q. So that a man may be in a fixed delusion—take the most common one, for instance the most fixed delusion, that he is the Lord and Saviour of mankind, and yet at the same time be perfectly capable of making abstruse calculations, and attending to the ordinary affairs of life?

A. That is so.

Q. Suppose, Doctor, that you were called to visit a patient who exhibited toward those whom he was naturally bound to love and protect, the most extreme irritability and passion, giving way to the most violent fits of temper, whenever the name of child or wife was mentioned, using the most profane and indecent language that you can possibly imagine a man to say, publicly attacking the virtue and the

character of wife or daughter as the case might be, asserting that one gentleman who was his most intimate friend, was the father of one of his children, that his wife was the mother of a child known to him to be the daughter of his sister—in other words accusing the wife to be the mother of his niece, publicly accusing his wife or daughter, as the case might be of continual and habitual illicit intercourse, this without the slightest foundation of any kind, nature or description, turning from abuse of that character of his wife and accusing her of illicit intercourse with a party, and then going from this declaration with respect to this man, and making him a trustee, and putting in his hands thirty or forty thousand dollars for the benefit of one of his children, refusing food because he thought his wife would poison him, publicly charging her with having three times attempted to poison him and he had providentially escaped, refusing to eat any food in his own house, and going as long as forty-eight and seventy hours without food, because he was afraid his wife being in the city, that she would poison him, though possessed of a large wealth, and having thousands of dollars at his command, refusing to buy food on the ground that he was too poor to buy food, and begging his bread from house to house in the neighborhood where he resided ; supposing that in addition to this, that he sat at night in the dark, refusing to permit any social intercourse and light to be made in his house, because he was afraid the agents of his wife would assassinate him ; suppose in addition to this that he had furnished the public officers, prosecuting officers of San Francisco, details at great length, the special facts and circumstances I have mentioned. And on that occasion, and on all other occasions where the subject of these charges against his wife and his daughter were mentioned, should fall into a violent passion, and with every species of opprobrious and indecent language declare that the person he has accosted and discussed his wife's and daughter's relations to him, was a spy on him, and in league with his wife, for the purpose of putting an end to his life and robbing him of his property, what should you say was the nature, the condition of that man's mind with respect to his wife ?

MR. PRATT—I did not like to interrupt Mr. Barnes' speech, but he has finished his oration and I make my objection, for the reason, even if it were his witness, the question would not be competent in that form ; but that the witness being examined as an expert, he must have heard the testimony, and then answer what his judgment and calculation is upon the testimony given. But I will object specifically at present, on the ground that it is no part of the cross-examination.

THE COURT—I will hear Mr. Barnes on that.

MR. BARNES—I suppose that I have a right in any examination of this witness that is produced here as a general medical witness, who personally and from observation, testifies to the sanity of this deceased man ; he visited him at his house, and weight is laid upon the circumstance that he was there for two days and nights before his death. I proceeded to examine him as to whether certain peculiarities were manifested. He said “no,” I asked him then at length whether if such peculiarities as those had been manifested, what he should say with reference to a man's condition. It is a perfectly proper and competent question.

THE COURT—Not on cross-examination, I think, Mr. Barnes. I will sustain the objection.

MR. BARNES—I except.



MR. PRATT—I would inquire the standard of Mr. Hawes generally?

A. I do not know that I am competent to judge. I am not competent to judge of that.

MR. BARNES—I object to renewing the examination of this witness.

MR. PRATT—I propose to ask the witness two questions on matters that were brought out in cross-examination by Mr. Barnes. First, I desire to ask you, Doctor, whether Mrs. Hawes, during the two days that you were there, manifested any degree of tenderness or solicitude—

MR. BARNES—I propose to interpose an objection right here, and ask the Court to inquire of counsel to state for whom and on whose behalf he appears and takes part on this trial, simply for the purpose of saving the question we discussed the other day.

MR. PRATT—I believe that question has been settled once.

MR. BARNES—But not in a form in which I could get any benefit from it. The discussion was made then, for the purpose of not detaining the jury, but it was well understood that whenever this arose, that I was to have the privilege of raising that question and getting it on record.

THE COURT—That is so.

MR. PRATT—The statement can be very readily made. I appear for and on behalf of Mr. Evans, general guardian of the child named in the will.

MR. BARNES—You appear for the purpose of sustaining the will?

MR. PRATT—For the purpose of sustaining the will, with the consent and approbation of the executor.

MR. BARNES—I object to counsel appearing here or representing Mr. Evans, or claiming the right to represent him, on the ground that Mr. Evans has no interest of any nature—no legal interest in this controversy, and no interest or estate in the estate which is the subject of inquiry in this Court, and has no standing in Court, to be heard by counsel, or otherwise.

THE COURT—The objection is overruled.

MR. BARNES—I except.

THE COURT—State to the jury if you please, what degree of tenderness or solicitude, if any, Mrs. Hawes manifested for her husband during your visit there?

A. I saw nothing that caused me to think anything unusual, either on his part or hers, except as I have stated. Her conduct was kind and wife-like.

MR. KENNEDY—Here the executor rests. That is all the witnesses on behalf of the executor.

MR. BARNES—I desire now to give the counsel notice, so that we shall not have any application to the discretion of the Court, on the ground stated here in this case, in 26 Cal. 606; *Kohler v. Wells, Fargo & Co.*, that through mistake of law, or from any inadvertence, they have failed or neglected to put in testimony, evidence in this case, any fact essential to establish the sanity of Horace Hawes, or any witness. Now, I think some of the counsel on the other side, are under a delusion, which it might be that the Court will show that they have a right to make a *prima facie* case here, to the introduction of so much testimony as they have presented by the subscribing witnesses so far as they went, and this medical gentleman, then, to draw our fire and then go on, and then undertake to rebut any facts that we may show, and, in addition to that, to introduce witnesses, tending to establish as

matter of opinion, medical and otherwise, the sanity of the deceased. In conversation with one or more of the counsel, I found that view was entertained, and I use now for the purpose of showing to counsel, and having it understood that we insist that when they rest their case in chief, they shall have put upon the stand every witness that they intend to call to establish the sanity of Mr. Hawes as a probated fact, and that when they rest, and one case is through, they will be confined to such proof as is strictly in rebuttal, confined to matters, concerning which our witnesses have testified, and then the case is closed on their behalf. It was stated to me by counsel, that in their view of the law of this case, the moment that they introduced the subscribing witnesses to this will, the burden of proof was shifted on us, and that we were bound to go on and attack the will, and they had the reply. Now, that there may be no mistake in this, whenever this case is ended, I wish to show that our view of the law, and the view upon which we propose to insist, is, that the burden of proof of showing the sanity of the deceased, the affirmative is entirely with them. And that they are bound to introduce upon their case in chief, all the testimony upon which they intend to rely to establish that fact, and that when we have done with our case, there is no more evidence to come in here, except such as shall be strictly in rebuttal to the case we make. The statute provides that the case shall be governed by the ordinary rules and practice of civil courts in civil cases, and I call the attention of the Court and counsel to this case of *Kohler v. Wells, Fargo & Co.* (reads and cites authorities).

MR. PRATT—I would like to make the suggestion: We have not asked the Court to pass upon that question. There is no question before the Court. It will be soon enough for your Honor to pass upon that when we offer testimony in rebuttal. We have made our *prima facie* case, and we rest. We will take the chances. When we offer testimony in rebuttal, we will argue the question.

MR. BARNES—I thought it was only proper to tell them what my proposition is in that particular. As Mr. Bartlett informed me, as my understanding was, that the burden of proof was upon us, to show that Mr. Hawes was insane, and that they would not require to introduce anything more than testimony, to make a *prima facie* case. That view I intended in fairness to combat. That was my object in doing so—that I may be understood.

THE COURT—That is not before me now. If they choose to take the risk, that is their lookout.

#### OPENING ARGUMENT FOR CONTESTANT.

MR. BARNES—If your Honor please, and Gentlemen of the Jury, as I understand they have rested, with reference to almost every act of a man's life, the presumption of the law is, that a man is sane when he does it. In the case of a deed for instance, if the deed is produced, signed by the party, duly acknowledged according to the forms prescribed by law, it is presumed that that deed was made by him when he was in his right mind, and had the power to dispose of his property, and the party who seeks to overthrow that instrument must show affirmatively that the man was insane, in a case where the defense is insanity—that he was insane when he made it. A man is



always, in the general transactions of life, in short, presumed to be sane until the contrary is proven. That is not the law, gentlemen, with reference to wills. Not that the law presumes that the man who makes a will is insane until he is proved to be sane, but there are certain affirmative propositions that a party is bound to go forward and demonstrate to the Court, as matter of fact, in addition to the mere introduction of a piece of paper which he says is the will, the statute requires him who propounds the will for probate, that the man who made it was of sound and disposing mind when he executed, published and declared it to be his last will and testament; that there was no undue influence and no persuasion, no fraudulent misrepresentation to induce him to make it. All that has got to be shown as an affirmative proposition, for that purpose and to that end. You have heard the testimony of these two subscribing witnesses, and the testimony of Dr. Stillman, upon which the executor rests. You are now, gentlemen, to give your attention to the facts which it becomes our duty to lay before you, with respect to what was the real and most melancholy condition of the mind of Horace Hawes for a period of years prior to his decease. It will not be pretended before you that Mr. Hawes was what is popularly termed a raving maniac, that he had neither judgment, discretion or the power to transact the ordinary concerns of life, nor will it be pretended before you that in very many of Mr. Hawes' relations in life his conduct and demeanor was not such as that which is exhibited by every man in ordinary transactions. What we want to undertake to prove to you, and which as a matter of law when that time comes, the Court will instruct you is operative to defeat this will, is, that in connection with certain subjects and certain persons indispensably and necessarily connected with the disposition of his property, Mr. Hawes was as raving and complete a maniac as ever stalked naked in Bedlam. We shall undertake to show that this peculiarity of Mr. Hawes' was of no very recent date; that the time extended back for several years; seven or eight years perhaps prior to his decease; that the peculiarity developed itself in the first place towards his wife, whom we shall show to you was in all her relations to him truly without blame; that she was a faithful, devoted wife to him, yielding to his caprices, obedient to his will, his starving, submissive, outraged wife. I do not ask you to find him insane because he deprived her of the necessaries of life; I do not ask you to find him insane because he went from store to store and told the grocer, and the druggist, and the dry goods dealer not to give that woman either clothing, or food, or medicine; I do not ask you to find him insane because he was eccentric up to the very verge of the border line that lies between reason and unreason; but I shall ask you to find him insane because, notwithstanding Mrs. Hawes was to him from the hour when she unfortunately stood by his side in marriage before Parson Fitzgerald, down to the hour when she saw him laid in his grave. After the birth of his children he conceived for her a violent insensible antipathy, and not founded in any sense upon any conduct of hers which went to the extent in the first place of attacking her character for chastity; not merely to one person, but I think we shall be able to show you by somewhere between twenty and forty witnesses, that Mr. Hawes charged his wife with promiscuous illicit intercourse with men; and that he charged her time after time to the persons with whom he was brought in contact, with having had continued illicit intercourse with Mr. Fitzgerald, the

minister who married him. That he charged again and again that Washington Bartlett, whom he has made trustee and holder of the fund which is to educate this boy, with having carried on illicit intercourse with his wife for years. I shall show you that at the very time when he was in daily conference with him and was reposing his head upon his bosom with a trust equal to that we read of in the New Testament; he was charging to the officers and detectives of this city, that Washington Bartlett was carrying on illicit intercourse with his wife, and trying to get witnesses to track and dog him to her assignations. I shall show you, gentlemen, that every act of hers that looked like an act not merely of affection but of exterior decency in civilized life, had, in his mind, a direct reference to that, and the little daughter of Dr. Caldwell, that he again and again asserted to people, was the daughter of his wife, and when pressed for a reason for it, said that it was because his wife was so fond of her. he could not account for it in any other way; that he went to the house where his wife and he had visited, and asked their neighbors and their friends to exclude his wife from their houses, on the ground of her character, and he said that she made it her business to teach his son to be a liar and a thief; that she was a thief herself; that she had broken open a house in the city, and had stolen property from it; that she had three times attempted to poison him; that he drove her to Redwood City, and sent for her again, and when she came, treated her like a dog; that when she came into the room where he was—we will show you by the testimony that is not to be attacked, that after she had left the room he would have the towels that hung on the rack by the washstand counted to see if any were stolen. We shall show that when she touched the spoon that fed his feeble, dying lips with medicine, he would have it washed and scoured; that solitary "*silver spoon*" that he kept for his own particular and private use—washed and scoured to get the poison and malaria out of it, and that when she happened in the room, he would not even trust the articles in use there to be washed, except in his presence; and he frequently had his food whenever he knew she was in town, cooked in the grate where he was lying sick. And he would say that this devil of a woman—towards her he would use language such as the lowest and the basest of mankind would hesitate to use towards a drunken drab that was laid in the gutter, that she was seeking to starve and poison him. I shall show you that he sat in the dark, because he was afraid that her agents would assassinate him. I shall show you, by the testimony of Mr. Byrne, the District Attorney of this County, that he went to him, that he employed Captain Lees and other detectives, and that he stated these facts about his wife, not once or twice, but through a series of months, and that they continued down to the day of his death—whenever she was mentioned; and that when contradicted whenever the question was discussed, and there was a doubt thrown upon her being such a character, he would fly into the most violent paroxysm of passion, and declare that the person to whom he had been previously talking, and endeavoring to convince of his wife's baseness, was a spy upon him, in league with her, to overthrow his life, and get his property. I shall show you, gentlemen, that he refused food, because he was afraid—refused to buy it, because, as he said, he was afraid that she would get hold of it and poison it, and that he waited until the middle of the night, and sat in the darkness, and would send this little orphan boy,

who waited upon him there, whom you have heard the witnesses speak of, to the houses of his neighbors, getting them up in the middle of the night, as he did, again and again, and, I shall show you, begging for bread; or they would come and ask him what was the matter, and why he did it, and that he had two reasons he would give. The first was that he was afraid his wife had poisoned everything in the house, or anything that he might buy; that she was in league with the butchers and bakers, and everybody else, to poison him; and, in the next place, he was so poor that he could not afford to buy food. I shall show you that when the clergymen, during this winter that he lay there, plotting this deed of gift, the character of which I shall undertake to analyze at a latter time, as being in itself, one of the strongest evidences, not of monomania, but of absolute insanity; that, while he lay there during that winter, I shall show you that when clergymen came to see him, before he would let them into his presence, he had to know that they had brought him food—beefsteaks, potatoes, bread, specifying the bill of fare, and all the condition of a presentation, by which, like a ticket to enter a show, they could be entitled to the presentation—like Brigham Young tithing the brethren in the house. That he lived during these last winter nights of his life mainly upon charities of that kind, subsisting in a great degree, I shall show you, in that way; that when the doctors prescribed for him, he would not take the prescription—that he refused the most nourishing food, and of even the presents that were made him, presents of wine for instance, rare old wine, that somebody brought in; his wife came into the room, and he had the whole of it thrown out, because she had poisoned it. So, again and again, during the last years of his life, he was afflicted by as complete and entire a monomania, with respect to her, as ever afflicted any man in the world. And that, within the will, we shall contend to you, established by the cases, Horace Hawes was a man of unsound mind, in respect to her; and that that unsoundness of mind did, as a matter of law, make this will of his null and of no effect.

[Here the Court adjourns until to-morrow morning, at 10 o'clock.]

#### FOURTH DAY.

FRIDAY, NOVEMBER 17.

DOCTOR A. B. CALDWELL called for contestant. Sworn.

*Examined by Mr. BARNES :*

Q. What is your age, sir?

A. I am fifty-two, sir.

Q. What is your profession?

A. I am a physician.

Q. How long have you been engaged in the practice of medicine?

A. Twenty years, sir.

Q. How long in the State of California?

A. Since 1849, with the exception of an absence of eighteen months from the State.

Q. What part of the State, mainly?

A. Santa Clara county for the last eighteen years.

Q. Have you any family ?

A. I have, sir.

Q. Of whom does it consist ?

A. A wife and nine children; two of whom are married; six young children.

Q. What is the relationship, if any, between Mrs. Caroline Hawes and your wife ?

A. They are sisters, sir.

Q. Have you a daughter named Caroline ?

A. I have, sir.

Q. How old is she ?

A. She was born, I think, about the latter part of December, on the twenty-seventh, I think, of 1852.

Q. Where ?

A. At my house, at Independence, Missouri.

Q. Were you acquainted with Mr. Hawes ?

A. - es, sir.

Q. Where did your acquaintance with him commence; and when ?

A. I was made acquainted with him by Major Chase, at Santa Clara, in the Spring, I think perhaps it was May, of 1855.

Q. Did your acquaintance with him continue after his marriage to his widow ?

A. Yes, sir.

Q. Did you occupy any professional relation toward his family ?

A. I was physician to his family from the time that he married till near his death ; until a few months before his death.

Q. Won't you state the standing, and intimacy, and acquaintance you had with the family; had you visited them and they you, if at all, so that the jury can form an idea of the extent of your intimacy with his family ?

A. We were very frequently at his house in this city, on Folsom street, at the place he stopped, and at Redwood City, where his family resided at some seasons of the year. And they as often, or more often, at my house, in Santa Clara County.

Q. Did he make any visits, and, if so, to what extent, to your house ?

A. Why, sir, he came so often for many years after his marriage, that I could not say how often; repeatedly; and stayed several days at a time with his family. When he became an invalid, he came and stayed for medical treatment, two weeks at a time.

Q. About what time did he become an invalid ?

A. He was always from when I first knew him, somewhat of an invalid or dyspeptic; but the peculiar affection, the disease of the lungs, of which he died came on afterwards. I learned from information obtained from him, about the time he was a member of the Senate, from this City. He attended the Legislature at Sacramento City.

Q. Do you know what year that was ?

A. I do not, but think it was about 1864, for in the autumn of 1865—October, 1865—he came to my house, and remained there for treatment.

Q. How long did he stay there ?

A. I could not say just now, how long; but it was several weeks, until the winter came on.

Q. Did you, at any time, observe in Mr. Hawes, any peculiarities

which led you to consider the question, medically, as to whether he was a man of sound mind or not?

A. I had regarded him from my first acquaintance, until he became an invalid, as a man of a superior order of intellect and intelligence, and not until he became an invalid, did I begin to suspect anything. My first suspicion was aroused, slightly aroused, however, in November; I think in November, 1865. The first act that I ever thought suspicious—and I did not regard it with suspicion until acts subsequently made me refer to this act.

Q. Go on and state to the jury, the facts and circumstances connected with Mr. Hawes, which led you to form either an opinion or a suspicion that he was not a man of sound mind?

A. The matter is so extensive, I shall have to be as brief as possible.

Q. Take as much time as you like; go on.

A. There is so much connected with my associations with him as a physician, for three years, that I hardly know where to begin. The first act that I recur to in my memory, that subsequently led me to believe it was suspicious, was his expression of fear of being assassinated or poisoned; that was in November, 1865. About November; I may be mistaken exactly as to date.

Q. State the facts that refer to that in detail?

A. A gentleman called at my house; an old acquaintance of ours living in Gilroy; and Mr. Hawes, who was staying at my house then for medical treatment. We were in the dining room taking a lunch, and this gentleman, who was fond of his dram, saw a bottle sitting on the mantle-piece. He took it up, standing by me, and said "what is this in this flask," supposing it might be brandy or whisky. I told him it was some of Mr. Hawes' medicine, and that it contained brandy, but there were tonics too in it, that he was then taking. Said he "I reckon it won't poison a fellow, would it?" I told him no, it would not, and he poured out a part in a glass and drank it off. He left soon after, and Mr. Hawes came in, and I, as a matter of amusement, told him of the circumstance, and he was afraid to touch it, or take any of it afterward, asking me if I watched him closely, and saw him when he handled the bottle, if he had a chance to put anything in it. And then after a pause of a few minutes, looked at me seriously again, and said, "are you sure you watched him all of the time." I told him I was sure he had no time to put anything in it, and he need not fear, and he afterwards used his medicine as before. That was the first circumstance. I thought nothing of it until subsequent matters made me think of this fear; he used frequent expressions afterwards showing fear of being poisoned or assassinated by individuals known or unknown, who might be hired.

Q. To what extent was that notion that he was in danger of being poisoned or assassinated, present to his mind from that time on?

A. There were times, sir, that it seemed to me to be almost a constant matter of fear. He at one time gave me complete control and management of his case; unlimited power and means for the treatment of his case; that any amount of money necessary to be spent in traveling and building houses or finding suitable location, and removing his location could be used. I fixed up a programme by which he was to be governed, for the restoration of his health. This was some two years before his death; just about two years before his death; may be a



little more; and he agreed to it. The arrangement was all satisfactory and pleased him very much. One part of it was to travel, leaving the coast, getting away from the sea breezes which were too harsh entirely for him, and get into the interior, into some sheltered cove, where he would be protected from the winds of the ocean. And he agreed to the plan and was much pleased with it. But it was finally given up, as he said the country was too full of assassins; and he could not be induced to go.

Q. When next did you observe any facts that affected your opinion with respect to him?

A. It was the same time he was stopping at my house. This arrangement was in March, or April rather, two years preceding his death, say 1869. At that time he exhibited to me marks of aberration of mind, sufficient to make me consider that he was a monomaniac. It was upon the subject of his wife.

Q. Go on and tell this, sir.

A. He had several private conversations with me, and I remained silent, listening more. He let out from one to another, and I did not attempt to cross him. He said very many harsh things concerning her—things that I knew were untrue, and constructions entirely of his own mind.

Q. What did he say?

A. It is so long ago, I do not recollect the particulars, only that she was not lady-like and refined enough to associate in the upper class of society of his acquaintances in San Francisco; that he had not so introduced her to that society, that she might figure in the world, as became a man of his wealth and talent; and that she would poison him if she were not too big a coward to do it, and that she never waited on him in his illness as a wife ought to wait on him, which I know not to be true.

Q. What was her conduct and treatment towards him?

A. I never saw anything but the most faithful attention, night and day, and kindness towards him.

Q. Did she prepare his food?

A. Yes, often I have seen at her house, supplying his food. At my own house, it was prepared and controlled under the management of my own family.

Q. What was his conduct and demeanor towards her, as you observed it?

A. Well, he never exhibited to me any manifestation of displeasure towards her—that is, nothing rash nor harsh, except in these private conversations. In the evening he sat entertaining me for hours with his talk.

Q. To what extent did he discuss these defects of his wife, to you?

A. Well, to the extent of wishing to get clear of her. Being my sister-in-law, I hardly knew how to act. Had I not regarded him as a monomaniac, I should have resented a portion of it; but I treated him kindly and mildly. He asked me to use my influence to get her to accept a sum of money, how much I don't recollect—twenty or thirty thousand dollars, perhaps, to retire and leave him and live upon plenty, and have nothing at all further to do with him.

Q. How often did he talk with you upon this subject?

A. Several times, sir, but once more particularly than any other time. He exhibited at that time a terrible state of excitement, from some cause.

Q. How did he behave himself?

A. He was boisterous.

Q. You say boisterously. Would you describe to the jury what he did?

A. He spoke loudly and violently, and raised and clapped his hands, and talked very loud; emphatically.

Q. Did he walk up and down the room?

A. I don't recollect whether he did or not.

Q. How was his language, with reference to its being profane or otherwise?

A. I don't recollect to have heard any profanity at that time. He may have used it, but he was not a constant swearer in his habits; it was only when he was excited. I heard him swear not very commonly.

Q. Won't you state at length what he said of Mrs. Hawes at this interview to which you refer?

A. I could not recollect it all, sir, but those were the points. He never made any attack upon her virtue, or accused her of infidelity, to me. He knew that would not do, and he never made any such attempt.

Q. Was there any particular, from his relations to his wife—was there any other thing done or said by him to you, that led you to question his soundness of mind?

A. Repeatedly, concerning another conversation—not on that evening though, when he dwelt upon his wife so. I got him pacified by mild treatment that evening, so that it passed off quietly. I matured the matter in my own mind, and said but little to any person about it. Either before or afterwards, perhaps both, I repeatedly heard him talk in a very wild way about his own greatness, and about monuments, and about posthumous fame. He seemed to be very ambitious about posthumous fame.

Q. Won't you state as nearly as you can, whether he talked on that subject—what he said?

A. Well, one particular expression of language that he used about that time on one of those occasions, was concerning Mont Eagle University. He had opened all his plans to me repeatedly, about that, and he stated that he would leave a monument of fame behind him, for which future ages would call him blessed. That the thing would not be completed now, or in our day, but years and years afterwards, when the present generation of men on earth would all have passed away; when his villifiers and calumniators were laid low in the dust, and our names be forgotten, and the people that would then be living would not know that such people as these had ever lived; that his name would be spoken in anthems of praise, not by a few, but by everybody, as one of the greatest benefactors of the human kind.

Q. How often did he talk in that way?

A. Well, he never talked in so great a strain as that but the one time; but he very often discussed that greatness. On another occasion in speaking of the building erecting at Redwood, the Mont Eagle University; speaking of his son; that when his son would get old and his hairs had grown gray, he would be enabled to stand upon the hill in the rear of the University ground or building, and he could wave his hand over the scene below and tell with proud exultation that my father did all this. He talked in that strain sometimes—he continued for an hour or two in that strain. So much of it that I could not begin to repeat or recollect all.

Q. What was Mr. Hawes' conduct and demeanor towards your daughter Caroline?

A. The last two or three years; two years, I had noticed an aversion, and that is all. He never said a word to me, but I had discovered an aversion, and nothing more than that—not talking to her, or noticing her.

Q. Did he speak to her at all?

A. On one occasion; in 1869 I recollect of his talking to her once.

Q. Where was that?

A. At my house.

Q. What had been his manner and demeanor towards her before that time?

A. That was the first time that I had ever noticed it, and then it was called to notice after that, more particularly, by an occurrence that happened.

Q. What was that?

A. It was merely some letter; some word had come from the ranch from his wife; that he supposed that my daughter, had communicated something to her, and he accused her of writing something.

Q. Accused your daughter of what?

A. Writing some information. As to what that information was, I do not know. Some little matter. He accused her of writing some information to his wife at Redwood City, at the time. She came up every few days, when she was absent, and he accused my daughter of writing something down to her; some little information, which she did not, and said that she would send him the letter, and show that she had not written it. If he did not believe her, she would write and have the letter sent up, and he could see she had not written it.

Q. From what you saw and observed, as a medical man, with respect to Mr. Hawes, what was and is, your opinion with respect to his condition of mind, after the period say, of two years before his death?

A. I regarded him as being partially insane, sir, and so I expressed it; I told his wife so. I told one or two confidential friends so, repeatedly.

Q. What do you mean by partially insane?

A. I mean a monomaniac; partially insane, by being insane upon some particular points or subjects.

Q. What were these subjects?

A. Well, one grew out of the other; his desire and passion for posthumous fame; his imagining that he was the greatest man that the world had ever produced, and his aversion to his wife without any known cause to him.

*Cross-Examination, BY MR. PRATT :*

Q. To commence where you left off, Doctor; you say that for two years prior to his death, or thereabouts, you had considered him partially insane.

A. I had considered him partially insane; yes, sir.

Q. You limit that insanity, I understand, to these two subjects, posthumous fame and his wife.

A. Well, I suppose you may limit it to them. To define it to a point at all, I should say those two points I was positive on.

Q. And the one was blended with, and grew out of—

A. His own greatness included in that, and that posthumous fame grew from that.



Q. The two subjects were matters of insanity—the two pieces of insanity, if I may so call them, were interlinked and blended, the one growing out of the other.

A. Yes, sir.

Q. On all matters of business, all other matters, everything except connected with these two subjects, his mind was always clear?

A. There were times that I had conversation with him, he was as rational and clear-headed as I had ever seen him.

Q. Was not he always on all other subjects, except something which was involved in those two subjects?

A. Well, sir, he was, as everybody knows, a very eccentric and peculiar man. His style of business, and everything was so peculiar, I did not know often how to account for his views; that was all. I attributed it often to an individual idiosyncrasy, or peculiarity of temperament—all those other things that were peculiar and different from other people.

Q. He transacted his own business, attended to his own affairs with a great deal of accuracy and detail, didn't he?

A. Yes, sir; I believe he did.

Q. And with great particularity up to the time of his death?

A. Yes, sir; so far as I know. Within the last six months before his death, I did not see him five minutes.

Q. After five or six months prior to his death, you did not see him?

A. No, sir.

Q. Doctor, now inform the jury when it was that Mr. Hawes first spoke to you in regard to his wife's poisoning him, or his fear on that subject?

A. I think, sir, it was 1869; April, 1869. He never had spoken to me anyway ill or cross of his wife previous to that, and very little subsequently after that month.

Q. Your greatest intimacy with his family had been prior to that, had it not?

A. No; my intimacy with his family has been as great; in the fall, until he went to Europe and returned, I saw him once or twice.

Q. Only once or twice after his return from France?

A. Only once or twice after his return from France. But I corresponded with him a great deal. He wrote to me constantly until the fall of 1870.

Q. Do you know, Doctor, who accompanied Mr. Hawes to France?

A. Yes, sir.

Q. Who were they?

A. I know from information, and the correspondence, and letters I have received. I did not personally see them. They are letters from him and my son, one of my sons, and his own son.

Q. Your son accompanied him, did he?

A. Yes, sir.

Q. With your acquiescence and approval?

A. Yes, sir.

Q. How old is that son?

A. He is fourteen years old now, sir.

Q. Did you place that son in the charge of Mr. Hawes, when he went on this trip?

A. He wrote me a letter from New York, proposing to place them in an institution of learning.

Q. Mr. Hawes wrote you a letter?

A. Yes, sir; to place them in an institution of learning in Europe, with my consent, and for me to write and give my approbation. I did so, but he did not place them in that institution of learning, but brought them back.

Q. Now to go back once more—in April, 1869, for the first time, he spoke to you of the fear that his wife would poison him. How many times after that did he speak to you on the same subject?

A. I cannot recollect whether after he left my house, that he ever did.

Q. Then you can only recollect of that one occasion on which he spoke to you?

A. Several times while he was at my house during this month, which I think was the latter part of March or the first of May—during the month of April.

Q. All these cases occurred then during this same visit, during April or May, 1869?

A. All of this conversation about his wife—yes, sir.

Q. You never heard him speak of her in that manner at any other time?

A. No. That conversation and talk that I had with him, almost forbade his ever doing it any more. I let him know that it was very disagreeable and unpleasant, and that I should treat the matter as well as I could, and give her some ideas, but did not pretend to cross him; and the subject was never renewed.

Q. How many times prior to April, 1869, had he spoken to you on that subject?

A. Never before that time.

Q. And never after?

A. Yes, sir. He may have spoken to me on the subject casually, lightly, or referred to it, but no general conversation; nothing I can fix upon as a point of time.

Q. Can you state to the jury the exact conversation that occurred on that subject? What did he say about it? How did he express himself? Simply the expression of fear that she might poison him, or impart a knowledge upon the subject? What was said to you?

A. I have about stated the affair as well as I can recollect it, in my direct examination.

Q. Give us all the conversation as fully as you can?

A. All the conversation, as far as I can recollect; perhaps an additional thing might be stated, that she was so neglectful of him that she paid no kind of care or attention to him whatever, and that she had an aversion and hatred to him, and all she cared for was to spend his money, and that if she did not accept of an annuity, or a particular sum and leave him, and withdraw entirely from his presence, not to be in his way, that she never would get the wrappings of her finger.

Q. You say in your direct examination, Doctor, that you know Mrs. Hawes was always kind and attentive to him?

A. I never saw anything else.

Q. What were your opportunities of knowing; what time did you spend in his house?

A. Whenever I went to the city, I would go down there one day and stay all night, until the next. I witnessed her attentions at night, sat up there often with them at midnight; and at my own house

she stayed some of the time. She came up repeatedly, and I saw her attentions, waiting on him, and nursing him.

Q. How often did these visits at his house occur?

A. I cannot say exactly, without reference to my diary, which is at home.

Q. But on those occasions, you never saw any unkindness on her part or his, when the two were together?

A. Only his cross, ill-natured manner; his style of speaking cross.

Q. What do you mean by that? That he was simply abrupt and a little rude—

A. That is all I mean.

Q. No accusations against her? .

A. None,

Q. No unkind sentiments expressed?

A. None.

Q. Merely the unkind manner in what he said?

A. The same as to a domestic, who had been waiting on him.

Q. During all this time of which you speak, when he was cross in his manner to her, Mr. Hawes was suffering considerably from disease, was he not?

A. Yes, sir.

Q. Is it not one of the direct results and effects of such disease as he was suffering from, ordinarily to make the patient irritable and rude in his manner?

A. Yes, sir, generally it is. The tubercular disease of the lungs when the system is wasting away, the nervous system becomes delicate, easily excited, agitated, and the patient is cross, even with their best friends and attendants.

Q. Isn't often the case that people, under such circumstances, attack their best friends first? Isn't that one of the peculiarities of those things, that is, that they are more likely to express themselves in a rude manner with those with whom they were intimate, than to strangers?

A. My experience about that is, that they are generally crosser, either to servants or domestics, or their own family, than any outside friends.

Q. Now, Doctor, inform the jury if you know whether, after Mr. Hawes expressed his fears that his wife would poison him, he still continued to receive from her food which she had prepared, and received and took from her medicines which were furnished?

A. After he expressed that, I have seen her go and get a bottle when the time was come for him to take medicine, and pour it out and give it to him, and he would take it.

Q. Did he have any objections?

A. No, sir; and I think I have seen him receive a plate of food and eat it.

Q. You spoke of his having declined to go into the country upon your recommendation, on account of his fear of assassins in the interior.

A. Yes, sir.

Q. Was that before or after he made this trip to Europe?

A. That was before, sir.

Q. When he contemplated this trip to Europe, did you ever hear him express any fears of assassination?

A. No, sir. I didn't hear him express any fear of assassination; he said nothing about it. I urged him to leave where he was living; his

house was not much, only a few feet above the water; it was a damp and low situation to live in, and, besides telling him, I wrote him a letter urging him, after I returned home, to leave as soon as possible, that it was death for him to stay there; to get out from the ocean breezes, the damp atmosphere, it was too harsh for him. And he did so, and started on the overland railroad; went East, and returned somewhat improved. He came back pleased to take another trip, and he asked me to let my son go with him—to go to Europe, and so I let my son go.

Q. Do you recollect, Doctor, whether, at the time you recommended this trip to the country, it was about the time when several cases of stage robbery and assassination on the road had taken place in different portions of the State?

A. No, sir, I don't recollect about that, whether it was after the time or not, or that there was any public excitement, that could create fears of any character.

Q. He didn't refer to any particular instance when he expressed these fears?

A. No, sir; only that the country was full of assassins.

Q. Did he ever assign to you any reason why he feared assassination from any parties, or any reason why he thought people might desire to take his life?

A. He remarked upon this occasion that it might be done for money, or might be done for persons who were his political enemies, or it might be done by persons who wished to get him out of the way for some profit or pay, if it could be done; that there were many causes for which they might assassinate a man—that a man could be hired for a few dollars to assassinate him.

Q. You know and recollect something of the history of San Francisco; you recollect something about the time the Consolidation Act passed. I don't mean the date, but do you recollect the circumstance?

A. Yes, sir; I recollect when the Consolidation Act passed, Mr. Hawes was then a member of the Lower House or Assembly, I don't recollect which, in the State Legislature.

Q. He had the reputation of having been very efficient in procuring the passage of that Act.

A. Yes, sir, he has repeated to me, and I have read the Act, as furnished to me by himself; and he told me all about its conception.

Q. Do you recollect, or do you know at the time of this circumstance, that after the passage of the Consolidation Act, on his return to San Francisco, a sort of mob was organized and went down to the boat when he arrived, and hooted and threatened him?

A. I heard of that. I don't know whether it has anything to do with this or not. I think I have heard of it.

Q. Did he allude to that at any of his conversations with you?

A. No, sir; he never mentioned that matter to me.

Q. Did he speak in any of those conversations, with reference to any of his legislative acts as being likely to create enemies; people who would assassinate him?

A. Yes, sir; he did, he always spoke—I don't know where he had this conversation with me; whether it was subsequent to April, 1869, when he was at my house; but I am of the opinion that it was prior to that, soon after his marriage.

Q. Did he ever say anything to you about his connection with the Registry law, and the enemies he had created?

A. He gave me a full history of the whole thing, sir, soon after its enactment.

Q. And that was prior to that time when he declined to go into the country, for fear of assassination?

A. Yes, sir.

Q. Didn't you hear him very often, Doctor, in the course of his conversations, or like conversations, make the general expression, that all the thieves and robbers were down on him, and wanted to kill him; or that they were his enemies, and were afraid of him?

A. I have often heard him make such expressions in regard to the population of San Francisco here, yes, sir, long before he was attacked with this disease of which he died.

MR. BARNES—Q. What was the expression he made use of, Doctor, about the people of San Francisco?

A. That these thieves, and robbers, and hounds, of San Francisco, had pursued him and were his bitter enemies. I don't recollect any point that he came to—that they would assassinate him—he may have said so.

MR. PRATT—Q. He said they were thieves, and his enemies in consequence of the Act he had taken part in in the Legislature?

A. Yes, sir.

Q. And this occurred before you heard him express this fear of assassination?

A. Oh, yes; because then when he was in moderate health, only dyspeptic, he often had long conversations with me about his political life.

Q. It was in April then, 1869, I understand, that the first circumstance occurred, which led you to doubt the soundness of his mind?

A. No, sir.

Q. When then.

A. It was two years before that that the first act that led me to be a little suspicious, occurred.

Q. In 1867?

A. In 1867, I think it was.

Q. In 1867, then, was the first circumstance that created any suspicion in your mind of insanity?

A. Yes, sir.

Q. Up to that time you supposed him to be perfectly sane?

A. There were three occasions when he came up several weeks, for me to attend him. One in 1867, and another one afterwards, and another one in 1869. There was one time between the two.

Q. Well it was prior to that, his public life as a legislator had transpired, wasn't it?

A. Yes, sir; that is prior to 1869, and prior—immediately after his return from Sacramento; when he had served his time out in the Senate, he came back with a very bad cough.

Q. In the Spring of 1866 was it not, that he returned from Sacramento?

A. I think so; and I think it was the next fall that he first consulted me, and sent for me to come down to the city.

Q. Before you had any suspicion of his insanity at all?

A. Yes, sir.

Q. Did he tell you on frequent occasions that all the thieves and robbers of San Francisco were down on him on account of his public course?

A. Yes, sir.

Q. He appeared to be afraid of them?

A. Yes, sir; he spoke of political cliques. He said that his legislation had stopped the thieving, and these robbers and thieves here, were men who were growing fat on the public treasury, were stopped in their career of robbing, and were down on him. That was in reference to the Consolidation Act.

Q. Now, when did you say you first became acquainted with Mr. Hawes?

A. I first became acquainted with Mr. Hawes in 1855; I think, in May, 1855.

Q. His wife and your wife are sisters?

A. Yes, sir; and he visited my house at that time.

Q. Was that before or after his marriage?

A. Before his marriage, several years. He was married in my house in 1858.

Q. And you first became acquainted with him in 1855?

A. Yes, sir.

MR. BALDWIN—Q. Do you recollect the date exactly, Doctor?

A. Not exactly the date, but I recollect distinctly that it was in the month of May; I think it was in the month of May; I am sure of that; somewhere towards the last of it; twentieth or twenty-fifth; along in there somewhere.

MR. PRATT—Q. Did he ever, on more than one occasion, speak to you of the Mont Eagle University, or of any university?

A. Several times, sir.

Q. When, according to the best of your recollection, did he first allude to such an enterprise, on his part?

A. The first conversation that he ever had with me, that I can now recollect positively about, was in April, 1869.

Q. Do you think that was the first time?

A. The first time that he ever gave me a detail in full, of his plans.

Q. Had he ever, prior to that time, expressed generally, a decision to found any charitable or any educational institution?

A. Yes, sir, previous to that.

Q. How early?

A. Something like a year before. A short time before that he proposed to sell me the Redwood Farm—the whole farm, for a certain sum of money, twenty years credit, at seven per cent. per annum, until it was paid up. But he afterwards, in talking upon the same subject, said that he had changed his mind about it, and that he thought, as the titles were now perfected, that he would donate it to some charitable institution, or institution of learning; and that was all he said upon that subject. No more conversation occurred until some time afterwards, and no detailed conversation of his plan until April, 1869, I am pretty sure.

Q. You think, then, he never spoke in general terms of his intent to found any public institution earlier than 1868. Was that the first he ever spoke to you on the subject?

A. About that time I think, sir. I might make a mistake of a year in guessing at it. I could not say when; but it was subsequent to his offer to sell me the property in that way, on those terms.

MR. PRATT—Q. Doctor, have you ever made any especial study of insanity?



A. Not more than other branches of my profession.

Q. Simply as it is involved, generally—

A. In my practice, frequently referring to authors, I have made it specially so far, but I am not a special practitioner of insanity.

Q. Have never been connected with any institution for the insane?

A. No, sir, never been connected with any institution for the insane.

Q. You expressed the opinion generally, to the jury, that you thought Mr. Hawes was partially insane during the last two years. Was that opinion founded entirely upon the facts which you have stated to the jury?

A. That his general demeanor—and I regarded that insanity generally in the light of harmless insanity as a general thing.

Q. He still retained a perfect competency to transact all manner of business?

A. Well, I don't say in reference to the last six months of his life, whether he was or not sir, but previous to that, he was at times too feeble; it was physically impossible for him to transact business well; and consequently his mind was often disturbed by the anguish of pain that he would be in. I never saw anything in financial matters with him that he was not correct to the dotting of the (i) and crossing of the (t).

Q. During the last six months of his life, you saw but very little of him. That is the reason of your inability to speak as to those six months?

A. Yes, sir.

Q. Was there any other particular fact came under your observation than those you have stated to the jury, upon which this opinion you expressed was founded.

A. I don't recollect any other particular fact, only his general course of conduct; singular actions generally; winding the whole up together I considered him under lunacy.

Q. Isn't it sometimes extremely difficult to determine the point where eccentricity leaves off and partial insanity begins?

A. Well sir, it can be defined very often where it leaves off, and where insanity begins. Insanity often grows out of and is detected by such a positive error of fact and judgment, that you know there is no data and nothing to go on; that it is not true, his conceptions are false, then I regard it as insanity.

Q. When a man believes something which no rational man can believe, then you regard him as insane, no matter how trifling?

A. Well, if he has conceived false facts in his own mind; facts—that his course of conduct is influenced by things that do not exist, then I regard him as insane.

Q. Then you would regard a man as insane who was simply mistaken as to the existence of a fact, and acted upon that mistake?

A. No sir, not exactly that, almost all men often act from false facts, but they are corrected in judgment when they find out that these facts are false; but his was continued. This so continued for months and weeks.

Q. He continued then to believe certain facts; and because he continued to believe those facts which you say did not exist, you believed him to be partially insane?

A. The nature of those facts had no foundation. They were of

such a nature that I had reason to believe it was an aberration of intellect.

Q. It was upon that that you formed your conclusion; because he believed and continued to believe the existence of facts which did not exist; which were unreasonable in your judgment?

A. Yes, sir; I have rendered judgment upon the admission of insane persons, very often; and that was a point that I found invariably decided me to admit the person that was examined to the insane asylum, and so rendering judgment upon that; from that point.

Q. Do I understand that you make no distinction between classes of facts; that a fact which in itself might be reasonable, but in fact didn't exist; if he was still believing and persisting in believing it, you would consider him partially insane?

A. I would if the fact were possible, but not probable, and all testimony and everything that I could see went to convince me that it was a false conception; and he had continued to adhere to this false conception, notwithstanding the world of testimony against it, I would decide that that man was insane.

MRS. J. Q. A. THURBUR called for the contestants. Sworn; and Examined by MR. BARNES:

Q. Mrs. Thurbur, where do you reside?

A. In Redwood City.

Q. How long have you lived there?

A. Thirteen years.

Q. Did you know in his lifetime, Mr. Hawes.

A. Yes, sir.

Q. When did your acquaintance with him commence?

A. Thirteen years ago last February.

Q. Where?

A. Redwood City.

Q. Was he then residing there?

A. He was not; he was there occasionally.

Q. Did you know Mrs. Hawes?

A. I knew her well.

Q. To what extent did your acquaintance with the family extend?

A. At that time I saw Mr. Hawes occasionally, and have continued to until the time of his death.

Q. How intimately were you acquainted with Mrs. Hawes?

A. As intimately as with any of my neighbors.

Q. You visited her, and she you?

A. Yes, sir.

Q. To what extent did you know them? to what degree of intimacy?

A. I was a frequent visitor at their house and they at mine.

Q. Do you remember about the time that Mr. Hawes went to Europe?

A. Yes, sir.

Q. Do you remember when he came back?

A. Yes, sir.

Q. About what time was that?

A. In July, I think about the 20th or 25th.

Q. 1870?

A. I don't know the date exactly.



Q. Did you see Mr. Hawes at all after he came home from Europe?

A. Yes, sir.

Q. Where?

A. At his house, also at my house.

Q. How often?

A. It was five or six weeks he was at home; I saw him two or three times a week.

Q. How did it happen that you saw him so often?

A. I called on him just as a neighbor after his return.

Q. At Redwood city?

A. Yes, sir.

Q. Well, did he send for you?

A. Yes, sir.

Q. When was that?

A. He also, when I was there, invited me to come, he frequently asked me to come every day and sit with him for an hour.

Q. For what reason?

A. To talk with me.

Q. In making these requests for you to call on him did he say what he wanted to talk to you about?

A. Yes, sir.

Q. What was it?

A. The second time I came, he said that he particularly wanted to establish the place of his burial; that was the introduction of his conversation.

Q. A cheerful subject. What did he say after that?

A. And he asked me if I thought it proper for him to be buried at the cemetery in Redwood city; if I thought it a proper place for a man of his standing to be buried.

Q. He wanted to know if the cemetery in Redwood city was a proper place for a man of his standing to be buried?

A. Yes, sir.

Q. What did you tell him?

A. I told him I thought it was a matter of choice for himself not me to decide, I asked him if he would not prefer to be buried in Lone Mountain. He said no, he had a horror of both places; he had been thinking of being buried on Eagle Hill.

Q. At this interview or at any other, did you have any conversation with him with respect to Mrs. Hawes?

A. At that time I did not.

Q. Did you ever?

A. Yes, sir.

Q. Where?

A. At my house.

Q. Do you remember the time?

A. I cannot remember the date, sir; it was sometime in August, between the 8th and the 21st.

MR. PRATT—Q. Last August?

A. A year ago last August.

MR. BARNES—Q. In the day or evening?

A. Evening.

Q. Won't you go on now and state to the jury, what that conversation was?

A. Mr. Hawes came to my house about eight o'clock in the evening, and asked me if I was willing to have a conversation with him.

He had some matter that he had long wished to talk with me about; if I was willing, he should like at that time to talk with me. I gave him permission, and he introduced the subject by saying that he thought I had long been deceived in Mrs. Hawes; and that he didn't consider her a proper person for me to associate with, or any other lady; that her conduct was very degrading, and that no person ought to associate with her.

Q. Did he specify any of the particulars in which her conduct was degrading, and made her unfit for the companionship of ladies?

A. Yes, sir.

Q. What did he say?

A. He said she was both a thief and a liar; that she had stolen from him; that she kept improper company, and was a very notorious woman.

Q. Did he say anything at that time in relation to her having made attempts upon his life?

A. Yes, sir.

Q. What was that?

A. He said she had three times attempted to poison him, the last time about a week previous to the time he was there.

Q. What did you say to that?

A. I said, Mr. Hawes, I think you are mistaken about that.

Q. What did he say?

A. He said no. He then told me that she prepared some powders for him—in porridge, I think, and there was something in it that ought not be there, and which he verily believed was poison.

Q. Did he say anything with reference to her having attempted that more than once?

A. Yes, sir; twice before; he didn't say when.

Q. Did he say anything about his little daughter Carrie, at this time?

A. Yes, sir.

Q. What was that?

A. He wished his daughter Carrie to go to Europe with Mr. Evans.

Q. Did he ask you to do anything about it?

A. Yes, sir.

Q. What did he ask you to do?

A. He asked me to steal the child.

Q. From whom?

A. From Mrs. Hawes.

Q. What reason did he give for your doing that?

A. Because I was a particular friend of Mrs. Hawes, and had a better opportunity of doing so than most people.

Q. What reply did you make to that proposition?

A. I made the reply that I was willing to do anything for Mr. Hawes that I could conscientiously do; that I didn't think I could do.

Q. Did he say anything at that time or refer to a determination to separate the child from her mother?

A. Yes, sir.

Q. What was that?

A. He said he was determined to do it, if it cost his whole fortune.

Q. What reason did he give for determining to take the child from her mother?

A. Because the mother was not a proper person to rear the child.

Q. At this time how did he speak about the child Carrie?

A. That she was a very lovely child; a very fine child; very superior in her talents; and with a good education would make a very superior woman.

Q. Can you state any more particularly than you have any reasons that he gave for determining to take his child away from her mother—anything more specific, than that she was not a good woman?

A. Was not a good woman; and that she taught them improper manners; that she had taught the son to both lie and to steal. He was sorry to say it, but felt compelled to do so.

Q. Did he say anything in relation to his discovery of these practices of his wife?

A. He didn't tell me who had told him.

Q. As to how long had he been finding it out?

A. He had known many things for a long time. Since his return from Europe, he had been convinced more lately.

Q. You stated that he said that Mrs. Hawes had stolen from him—was a thief; did he say what she had stolen?

A. She had stolen some wheat; she had also broken into his house on Folsom street, and stolen a gun; she had also stolen the furniture and sold it; she had robbed the house effectually of nearly every thing in it that was of value.

Q. Now, with reference to Mrs. Hawes' character for virtue; did he make any attack upon that, with relation to anybody?

A. Not particularly—Mr. Fitzgerald.

Q. What did he say about Mr. Fitzgerald—is that the present Superintendent of Schools?

A. I presume it is, sir; I don't know the gentleman.

Q. What did he say about Mr. Fitzgerald?

A. He said she had been a constant companion of Parson Fitzgerald ever since they were married.

Q. You mean in an improper way?

A. In an improper way.

Q. Did he say anything about his wife's character before he married her?

A. That she had always been of a bad character.

Q. Did he name any person?

A. No, sir; with the exception of Mrs. Hawes having broken up the family of her sister.

Q. Which sister?

A. I think her name is Howard. The sister living in Cincinnati, sir; I don't remember the name.

Q. Did he say anything about a man named Charles Livingston?

A. Yes, sir.

Q. What did he say about him in connection with his wife?

A. He said that he was a thief; that she was in league with Mr. Livingston, and several others he mentioned.

Q. In league for what?

A. Theft.

Q. Now, when he made these statements to you did you assent or dissent to what he said? What did you tell him?

A. I told him; when he spoke of Mr. Livingston, I thought he was deceived in regard to Mr. Livingston.

Q. What did he say to that?

A. He said he was not deceived.

Q. What did he ask you then, after making these statements, to do, with respect to Mrs. Hawes, as to your own intercourse with her?

A. He wished me to drop her acquaintance entirely; to forbid her coming to my house.

Q. Did he say, at the time he was telling these stories about her having attempted to poison him, did he say anything to you with reference to his being in a starving condition?

A. Yes, sir.

Q. What did he say about that?

A. He said she had tried to starve him to death, and he was afraid to eat anything in the house.

Q. Did he make an offer to you of a reward of any sort for helping him to get rid of his wife, or to assist him in his plans?

A. Yes, sir.

Q. What did he say on that subject?

A. He told me he would place me far above want. He didn't name any stated sum. He said he was willing to spend even his whole fortune to get Carrie from her mother.

Q. Afraid to eat anything in the house?

A. Yes, sir.

Q. Did he tell you anything with respect to his trip to Europe? and his son Horace?

A. Yes, sir.

Q. What did he say after that in connection with his wife?

A. He said that he had twice punished his son Horace severely to make him tell him things that his mother had done while he was abroad; while he was at the east.

Q. What sort of things did he allude to?

A. He alluded to her conduct while in the city; places that she visited.

Q. Did he tell you, during his absence at the East, where she had been going in the city here, the character of the places?

A. Yes.

Q. What did he say about that?

A. He said she visited houses of assignation and bad repute, the lowest kind of places.

Q. Did he tell you where he got that opinion?

A. Partly from his son Horace.

Q. That he had whipped the boy?

A. He punished the boy; I don't think he said whipped.

Q. Punished the boy severely until the boy had told him that his mother, during his absence at the east, was in the habit of visiting houses of assignation, and houses of the worst repute and character.

MR. PRATT—I do not distrust the honesty of the witness at all, but I object to Mr. Barnes' putting the answer in the witness' mouth. I didn't understand the witness to say he had punished the boy until he told him that.

MR. BARNES—Q. Did not you say so?

A. I did, sir.

MR. BARNES—How long did this conversation last? How long was he there talking in this way?

A. He came to my house ten minutes before eight, and staid until ten minutes before ten.

Q. What was his general manner and demeanor while having this conversation with you?

A. He was very much excited.

Q. How did he manifest it?

A. By loud talking, and throwing his arms.

Q. How long have you known Mrs. Hawes intimately, Mrs. Thurbur?

A. Since 1862.

Q. Now I will ask you if, from your knowledge of her, your association with her, there was, so far as you know, any foundation whatever, for any of these charges that he made against her?

A. None, whatever.

Q. What has been Mrs. Hawes' conduct and treatment of him during those years that you have known them, as far as you have observed?

A. I think she has been very kind and gentle with him.

Q. What has been his treatment of her; his manner towards her?

A. Oftentimes, when I have been at his house, he has been very sharp and abrupt; would not allow her to speak; when she attempted, he would tell her to stop, it was not time for her to speak, and wait until he got through, or some one else got through.

Q. Was that in the ordinary association of home, that he treated her this way?

A. Yes, sir; frequently at the table.

Q. After this interview that you speak of, at your house, did you ever talk any more with him on this subject?

A. No, sir.

Q. How often after that, did you see him?

A. I saw him two or three times previous to his death.

Q. Did he ever allude to any of these things?

A. No, sir.

Q. From what Mr. Hawes said to you, with respect to his wife, and his manner and demeanor when speaking, did you form any opinion with reference to the state of his mind?

MR. PRATT—I object to the question, your Honor, simply on the ground that it is incompetent; the witness, particularly, doesn't profess to judge as to the sanity of Mr. Hawes.

THE COURT—I will hear, Mr. Pratt.

MR. PRATT—I will simply state that is my impression of the law—from all the authorities I have ever observed, I think it is not competent for any other witness than an expert, to give his opinion of sanity or insanity. They have no authority.

MR. BARNES—Read the question, Mr. Reporter. [The reporter reads the last question to the witness].

THE COURT—I think that is a proper question.

MR. PRATT—The objection does not apply to that question. I suppose it is proper enough to answer that.

THE COURT—There is a conflict in regard to the form of the questions. They are very nicely distinguished.

MR. BARNES—If there is any question about the form of the question, I can furnish a dozen authorities here—

THE COURT—That is a proper question, Mr. Barnes. [The reporter repeats the question to the witness].

A. I did.

MR. BARNES—Q. State what that was.

A. It did not seem to me that any sane man would take the ground that he would.

MR. PRATT—I make the same objection; I won't stop to argue it, but will take the ruling of the Court, and take the exception, if the Court is of the opinion it is a competent and proper question.

THE COURT—The distinction that I would call to mind is, in a few words, that when an expert is examined, he can give his opinion of what others have testified to. In the early cases it was held that a person who was not an expert could not express an opinion on the subject of sanity or insanity; but modern cases, so far as I have been able to collect, are to the effect that ordinary witnesses may express their opinion on the state of the mind of the decedent, and give the facts upon which their opinion is founded. The question now is: from the facts that come within her personal observation, did you form any conclusion of the sanity or insanity of the testator? That opinion will go to the jury for what it is worth. And they are to take into consideration the opinion expressed by the witness, also the facts upon which the opinion is based. I think the question is proper.

MR. BATES—I can refer the counsel to authority on the subject which is decisive.

MR. PRATT—We simply note an exception, without an examination of the authorities.

MR. BATES—Redfield on the Law of Wills, part I, star page 143 and cases cited.

Q. What was your opinion?

A. It didn't seem to me that any sane man would talk as he did, or use the language about his wife.

Q. What was your opinion as to whether he was sane or insane on that subject?

A. Well, sir, I thought when he came in, that he was an insane man.

*Cross-examination : By MR. KENNEDY—*

Q. You have stated that you were acquainted with Mr. and Mrs. Hawes at Redwood City?

A. Yes, sir.

Q. You visited there frequently?

A. Yes, sir.

Q. What opportunities, if any, had you to know Mrs. Hawes' conduct or character for chastity, or otherwise?

A. The same opportunities that I have of any of my acquaintance; any lady that I associate with.

MR. PRATT—Q. You know the circumstance of Mr. Hawes' visit and return?

A. Yes, sir.

Q. How long after his return was it when this conversation which you have detailed took place?

A. I should think between three and four weeks. It might be more than four weeks; I don't recollect the date of his return from Europe; neither do I recollect the date of his being at my house and having this conversation.

Q. Do you recollect, or did you know the circumstances—you say you were an intimate acquaintance and neighbor—that Mr. Hawes and his wife had a quarrel, immediately after his return from the East?

A. I knew something of it; I didn't see anything of it; all I knew was by hearsay.

Q. Wasn't it a matter of general public talk and scandal, in Redwood?

A. I presume it was, sir.

Q. Don't you know the fact that there was some lawsuits growing out of it?

A. Yes, sir.

Q. Do you know what Mr. Hawes' habits were, with reference to the management of his domestic concerns, so far as finances were concerned more particularly. Didn't he keep an accurate account of all his expenditures, and manage the whole of the household and domestic expenses himself, in detail?

A. I think he did, sir.

Q. Did not he tell you in the course of some conversation, when he denounced Mrs. Hawes as being a thief, that when he went away he had left her with abundance of money to provide for all of her wants, during his absence?

A. Yes, sir.

Q. And that she had exhausted the money, and sold the furniture, and sold wheat, and other property belonging to him, and run him in debt?

A. Yes, sir.

Q. It was on that basis, was it, that he called her a thief? That was what you understood at the time, was it not?

A. Yes, sir.

Q. Do you know as a matter of fact, whether Mrs. Hawes had sold the furniture and wheat, or not?

A. I do not, sir.

Q. You have known the Hawes' quite intimately for a number of years, I believe you said, or the family, and had been a frequent visitor at the house?

A. Yes, sir.

Q. Was Mr. Hawes, now, as a matter of fact, particularly fond and very much attached to his little daughter—proud of her?

A. Yes, sir; the last year he was very fond of her.

Q. Very anxious to get possession and custody of her?

A. Yes, sir.

Q. Was there the same degree of attachment evinced for his son as for his daughter?

A. I think so, more so.

Q. I understand you to give it as your opinion that Mr. Hawes was insane, simply because he accused his wife of these things. Is that the reason of your opinion?

A. No, sir.

Q. Well, give us the other reasons then, whatever they are?

A. The reason was his general conduct. I didn't think Mr. Hawes in his right mind would come to me with that story; I didn't think he would go to any lady.

Q. The fact, then, that he did go to you with that story, was the reason you thought he was not in his right mind?

A. That was one reason.

Q. What other reason existed?

A. His general manner.

Q. His general manner towards whom?

A. Towards his family in general.

Q. Well, what was that general manner. Was it anything more than a rude manner. You say, I think, he was cross to her; something in that connection?



A. I did, sir.

Q. Was that all?

A. No, sir; I don't think he paid her the attention that a husband generally pays a wife.

Q. Well, what do you mean by that. Designate a little more particularly if you can. Wherein was he lacking in attention of his wife?

A. Well, you would seldom, if ever, see them out together; he would not let her go with him; very seldom.

Q. What else?

A. Then at times he would not sit at the table with her.

Q. Anything else?

A. I don't know as I can give anything else.

Q. That is all, is it? Suppose now that all that Mr. Hawes accused Mrs. Hawes of to have been true; assuming that she was a thief, and a liar, and a woman of bad character for chastity; assume that those are facts, and Mr. Hawes came to you and informed you of them, and as a friend advised you to break up your association with her, would you then consider that evidence of his insanity; assume that it was all true, would you still say that he was insane for advising you to break up your association with her.

A. I think he could have done it in a different way and manner than in which he did it.

Q. Undoubtedly he might have done it in many different ways; but that is not an answer to my question; assuming all that he accuses her of to be true, from the mere fact of his making a statement of it to you, and advising you not to associate with her, believe him insane?

A. I think I should not.

Q. Well, you say that on this occasion Mr. Hawes was considerably excited. In the first place he was in bad health then, and had been for some years, had he not?

A. Yes, sir.

Q. Suffering considerably, physically?

A. Yes, sir.

Q. Nervous, ordinarily, was he not?

A. He was.

Q. Irritable and excitable?

A. Yes, sir.

Q. Did he manifest any more excitement on this occasion than a nervous man, who had heard and believed such things about his wife, would naturally evince while talking about it?

A. I think he did.

Q. How did he manifest that unusual degree of excitement?

A. I think very many men would have felt grieved.

Q. Didn't he seem to feel grieved?

A. No, sir; he did not.

Q. How did he seem to feel, simply angry?

A. To feel enraged towards her.

Q. I don't get your answer to the question yet; How did he manifest this extraordinary excitement?

A. By loud talking, throwing his hands.

Q. Anything else?

A. No, I don't know as I can describe anything else.

Q. Simply by loud talking and slapping his hands, did you say?

A. Throwing his arms, and moving about in his chair.

Q. Was that all ?

A. Yes, sir.

Q. Was this the only occasion on which Mr. Hawes ever spoke to you in that way, of his wife ?

A. Yes, sir.

Q. How long was that prior to his death ?

A. In August, previous to his death in March.

Q. This was in August, and he died in the March following ?

A. Yes, sir.

Q. Well, from that time, did Mrs. Hawes still continue to live with him, wait on him, and attend upon him ?

A. Yes, sir.

Q. Did he still receive his food and medicines, and drink, etc., from her ?

A. I don't know, sir.

Q. Have you ever had any conversation with Mrs. Hawes about this matter, before coming here ?

A. Mrs. Hawes didn't know what Mr. Hawes said to me at my house. I had talked with her about this affair, but I never told her the conversation I had with Mr. Hawes.

Q. Have you informed any one before you came here, to-day, of this conversation between Mr. Hawes and yourself ?

A. Yes.

Q. Who was it ?

A. Mr. Bates.

Q. When did that occur ?

A. About two weeks ago.

Q. And where ?

A. Redwood City.

Q. Did Mr. Bates come down there to see you ?

A. He did, sir.

Q. You never have had any conversation with Mrs. Hawes about it ?

A. I have, sir.

Q. When did you first talk with her about it ?

A. I cannot say; I don't know.

Q. Well, about how long since ?

A. Some time since a year ago last August—I cannot say when.

Q. It was some time since the conversation, you mean ?

A. Yes, sir.

Q. Is that as near as you can fix the time ?

A. That is as near as I can fix the time.

Q. Was it within the last ten days ?

A. I don't think that I talked with Mrs. Hawes—I don't think I have told Mrs. Hawes what Mr. Hawes said to me at any time, I have talked with Mrs. Hawes about this affair, but I have never told her what he said, excepting soon after Mr. Hawes was at our house, I said to Mrs. Hawes: "Keep your eye on Carrie, Mrs. Hawes; don't let her out of your sight."

Q. When did you first know that you were to be called as a witness in this case ?

A. When Mr. Bates came to see me. I don't know how long ago it is.

Q. Are you any ways related to or connected with Mrs. Hawes ?

A. No, sir.

Q. Have you any interest whatever in the result of this controversy, direct or indirect?

A. I have not.

Mr. BARNES—I shall go a little out of my order of proof to call a gentleman who wants to go away.

ROBERT B. SWAIN, called for contestant. Sworn.

*Examined by Mr. BARNES.*—Q. How long have you resided in San Francisco?

A. Some fifteen or sixteen years.

Q. Did you know Mr. Hawes, deceased, in his lifetime?

A. I did, sir.

Q. When did you make his acquaintance?

A. I think it was in the spring or summer of 1869?

Q. Prior to his going to Europe?

A. Before he went to Europe; yes, sir.

Q. Had you ever had any personal acquaintance with him much before that time?

A. Never, sir.

Q. Under what circumstances did you make his acquaintance; how came you to?

A. He sent for me and requested that I would visit him at his house on Folsom street, to confer with him in reference to some charities.

Q. Did you go there?

A. I did, sir.

Q. How long did you converse with him at that time?

A. I should think I talked with him two hours.

Q. Without going into details at length into that conversation, what was the general topic of conversation, if there was but one?

A. There was only one topic we discussed; it was in reference to endowing two institutions; one was the Chamber of Industry, in San Francisco; another was an institution at Redwood. The chief topic upon which he conversed with me was the foundation of the Chamber of Industry, in San Francisco.

Q. After that, and before he went to Europe, how many times did you see him?

A. I should think I saw him six or eight times. I never went to see him without he sent for me.

Q. What?

A. I think I saw him six or eight times. He always sent for me when I went to see him.

Q. After he went away, did you hear from him by letter?

A. I did, sir.

Q. From what place?

A. The first letter was dated from New York.

Q. Did that letter cover any document or paper?

A. He sent me a power of attorney, or what purported to be a power of attorney, to manage all his interests in this State.

Q. Have you that letter and power of attorney with you?

A. I have, sir.

Q. Please produce it?

A. [Producing papers]. There is the letter, and that is the power of attorney.

Mr. KENNEDY—For what purpose are these papers introduced? I do not see what figure it cuts here.

MR. BARNES—As evidence in the case, tending to prove the insanity of Mr. Hawes in his lifetime. That is the object of it. I shall offer these in evidence. The signature of Mr. Hawes to them is admitted by counsel on the other side.

MR. KENNEDY—I have no objection to its introduction for that purpose.

MR. BARNES—I give you my word I do not introduce it for any other. [Reads]:

“NEW YORK, October 16, 1869.

“R. B. Swain, Esq., San Francisco:

“MY DEAR SIR:—To-day I sail with my son and nephew direct for Havre; expect to spend some years, probably, in Europe, if I live; but, my dear sir, I am sick, and there are equal chances that my absence may be more permanent than I anticipated. The greatest act of friendship you can now do me, would be to accept the confidential charge expressed within, which I hope will cause you no trouble, but would leave my mind at rest, and materially aid in retarding the progress of my disease, which is the only alleviation I can expect. J. C. Bates, a young lawyer, S. W. corner Jackson and Montgomery, up stairs, has charge of my business in the city generally, but has no power of attorney. He is a young man of integrity, I think, but inexperienced, and naturally very dull and dilatory. I should prefer, if I could get a fit man, to give his time exclusively to my business, to stay in the office, 1,314 Folsom street. Mr. Bates has a complete schedule of property, etc., which please examine, and require him to exhibit his accounts, etc., at least once a month. Curtis Beard and Charles Livingston, the latter is cashier, are in charge of the business belonging to the Redwood farm, and are very reliable men, I think, but may want prompting. I have sent you this confidential power, not with the expectation that you would be able to do more than inspect accounts, appoint or remove agents, if necessary, to protect me and my property, if any emergency should require your intervention.

“Very truly, your friend,

“HORACE HAWES.

“Please treat Mr. Bates delicately, as he is somewhat sensitive.”

Here is the power of attorney. I wish to call the attention of the gentlemen of the jury to the paper itself, a fragment of a half sheet of paper.

Q. Was that received in that way?

A. Just as it was received, sir.

MR. BARNES—[Reading.] “I, Horace Hawes, of the City and County of San Francisco, in the State of California, do hereby authorize R. B. Swain, Esq., of said City and County, during my absence, to take the general charge and care of all my property, real and personal, in California, to appoint any necessary agent or agents, and at his pleasure to remove any agents by him or by me appointed, and at all times to inspect and supervise the transactions of such agents, and generally take and direct such measures as may in his judgment be necessary for the safety and preservation of such property. Horace Hawes.”

Endorsed on the back, “Please stamp this. Hawes.”

The above letter is marked “Exhibit No. 1,” and the power of attorney, “Exhibit No. 2.”

Q. After you received that letter, Mr. Swain, what did you do? Did you answer it?

A. I did, sir; that is the first thing I did.

Q. Did you hear from Mr. Hawes again?

A. I did, sir.

Q. Have you that letter?

A. I have, sir.

Q. Will you give it to me?

[Witness produces a letter and envelope.]

MR. BARNES—The signature to this letter is admitted. The letter is mailed at Cannes, France, on the 15th of December, 1869; addressed to R. B. Swain, Esq., U. S. Mint, San Francisco, California.

“Cannes Alps, Maritime, December 15, 1869.

“R. B. Swain, Esq.,

“MY DEAR SIR:—I am wintering here, about six hundred miles south of Paris, two hundred miles east of Marseilles and thirty miles west of Nice. *It is doubtful* if I shall be able to reach California again. My son and nephew are in Paris. All letters for me are to be directed there, care of the U. S. Consul-General. Mr. Bates has been instructed to communicate freely and fully with you. I call your attention to that:

“Hon. M. C. Blake has the deeds of foundation of the University, and the Chamber of Industry, and my will. All the foregoing is confidential, except my whereabouts. Your name is in the deed of foundation of the Chamber of Industry. I only wish that you could foresee, as I do, the grandeur of that institution as it will exist five hundred years hence, after its resources and its system of operation shall have been increased, and perfected by this accession of ages of donation and experience. On the other side you have a memorandum of my property.

“Your friend,

“HORACE HAWES.”

MR. BALDWIN—I think there is a fixed rule in regard to the introduction of evidence. All evidence should go before the jury without anything in the way of comment or inuendo. Whatever it is, it should go purely, and afterwards in argument, it would be time to make them. In reading a letter or a document, a man may throw emphasis on a word, and the meaning can be almost made to bear the interpretation put upon it by counsel. I think when the evidence goes to the jury, it should go in the natural voice without comment at all. I have heard that question raised in Courts by counsel of greater experience than myself, and I have heard the rule laid down as eminently fit and proper.

MR. BARNES—Perhaps my learned friend, notwithstanding his modesty, if he had seen the papers, he would observe the reason why I laid the emphasis on it. I read it as Mr. Hawes wrote it, and where I read with emphasis, it was underlined and italicised. That is the reason I read it so.

MR. BALDWIN—It seemed to me some of the words might receive an emphasis that the jury otherwise might not put upon it. We may have considerable documentary evidence introduced, and I regard it as a fixed rule where documentary evidence is to be introduced before the Court and jury, particularly before the jury, that they should receive it without any manner of comment. The way counsel read the name *Hawes*, particularly—

THE COURT—I have no doubt that the rule suggested by Mr. Baldwin is the correct rule, but I don't know that it has any application to this case. As the counsel says that the parts emphasized are read as they are written. Now, frequently from reading of documents at first, it may be read with a good deal of emphasis, directing the attention of the Court and jury to some particular fact in it, but whenever it is read in that way, counsel should state that the emphasis is his own, and not on the original document. The presumption is that when emphasis is put upon any particular part of a document, without any explanation, that the emphasis is there itself.

MR. BALDWIN—It was a question particularly of time. At the argument, I have no doubt whatever, that counsel has a right to throw emphasis upon emphatic words, and call the attention of the jury to any particular sentence he regards important, but when it first goes to the jury, it should come from a pure channel, because they cannot find out whether the construction is the proper one or not, that counsel gives it.

MR. BARNES—I do not desire to do anything improper, and perhaps, if it is desired that the testimony should go through a perfectly pure channel, I will get my friend to read them for me hereafter, and it will be all right. I was just about to read the list of property. Redwood; Redwood farm, 2,020 acres, near Redwood, Curtis Beard, General Superintendent; Charles Livingston, cashier. Mission Block, No. 2, between Folsom, Howard, Ninth and Tenth streets, dwelling, etc.; Mission Block, No. 44, bounded by Harrison, Bryant, Ninth and Tenth streets, small dwelling on it; east half of block 8, bounded between Harrison, Folsom, and a line through middle of block, part of school lot, and fronting on Harrison street; a large building on Folsom street front; Water lots 9 and 10, west side, fronts between Vallejo and Green streets, the two middle full lots, rent, \$100 a month; Water lots 438 and 439, north side of Folsom, between Beale and Main, the two middle lots not rented, *perhaps*; 50 vara lot 205, S. W. corner of Pine and Sansome, rented to Blumenburg for \$800 per month, running ten years; last five, one thousand per month. My drafts are on Davidson, cashed by Belmont in New York, and the house of Rothschilds in Europe. At Davidson's, my account will be good for all my drafts, drawn *from time to time*. No one is authorized to draw checks, sign notes, or bills of exchange, or contract debts on my account. Full explanation hereafter. H. H.

The above letter is marked "Exhibit 3."

Q. Did you answer that letter?

A. I am not sure that I did.

Q. Did you get another letter from him?

A. I received another letter, yes, sir.

Q. Have you got that?

A. Yes, sir. I say I am not sure; I mean to say that I am a little uncertain whether I did or not answer that letter. I think I did not.

The signature is admitted by counsel to be that of Mr. Hawes.

" Cannes Alps, Maritime, December 30th, 1869.

" R. B. Swain, Esq.

MY DEAR SIR:—I wrote to you December 15th, and now return you my warmest thanks for your kind and satisfactory letter of the 4th of December, this post-marked letter having no date. It has been a great relief to my mind. I am considerably better than when I first



came here, but I do not look for anything more than temporary alleviation; but I have not strength to endure the fatigues of travel. I trust that some good may result from my visit to Europe, on which subject I hope to live to converse with you fully.

“Truly, your friend,

“H. H.

“My address is Paris, always, in care of the U. S. Consul-General.”

The above letter marked “Exhibit 4.”

Q. Did you ever get another letter from him?

A. That is all.

Q. Do you remember now Mr. Hawes' return from Europe, in the summer of 1870, of hearing about it?

A. Yes, sir.

Q. Did he ever call to see you?

A. No, sir.

Q. Did he ever send for you?

A. No, sir.

Q. Did you ever see him after his return from Europe at all?

A. No, sir.

*Cross-Examination*, by MR. PRATT.—Q. How long have you been a resident of San Francisco?

A. Fifteen or sixteen years.

Q. You were at one time Superintendent of the U. S. Mint, were you not?

A. Yes, sir.

Q. For how long a time?

A. For seven years nearly.

Q. What business are you in now?

A. I am a merchant, sir.

Q. What is the firm?

A. R. B. Swain & Co.

Q. Are you connected with the Chamber of Commerce, also?

A. Yes, sir.

Q. And with the Mercantile Library?

A. What?

Q. Are you President of the Mercantile Library?

A. I am not now, sir.

Q. You have been?

A. Yes, sir.

Q. What has been your connection with the Chamber of Commerce?

A. I am President, sir.

Q. You have been President of the Mercantile Library?

A. Yes, sir.

Q. Did you write to Mr. Hawes on the fourth of December, a letter to which he refers in his letter?

A. I think I did, sir. I think it acknowledged the receipt of his first letter to me.

Q. You have also been connected officially with some public benevolent society here—the San Francisco Benevolent Society?

A. Yes, sir.

Q. You have been President of that?

A. Yes, sir.

Q. Are you still?



A. I am, sir.

Q. Were you at the time of this correspondence?

A. Yes, sir.

Q. You are, consequently, pretty well known in San Francisco?

A. I presume I am, sir.

[Here the Court takes a recess till half-past eight o'clock.]

AFTERNOON SESSION.

HENRY H. BYRNE called for contestant. Sworn.

*Examined* by Mr. BARNES.—Q. What is your business, and how long have you resided in this city and county?

A. I am an attorney, sir, and I have lived here in the neighborhood of twenty-two years, in this town.

Q. Were you acquainted with Horace Hawes, deceased, in his lifetime?

A. Very well, sir.

Q. Over what period of time did that acquaintance extend?

A. Well, nearly twenty-two years; from 1850 up to the time of his death.

Q. What was the nature and extent of your acquaintance with him?

A. Well, I was very intimate with him, to begin with. I studied the Consolidation Bill for two years with him in this town, and was a sort of associate counsel from 1856 to 1858—I was then from 1851 to 1857 District Attorney, and I was in the habit of riding with him, walking with him, conversing with him, for years.

Q. During that time did you have any social acquaintance with him; I mean in his family?

A. No, sir; I never knew his family at all.

Q. Never visited him?

A. I did not know any of them except him.

Q. Do you remember seeing him in July or August, 1870, shortly after his return from Europe?

A. Well, I don't remember the month, nor the day; I remember the year; but it was shortly after his return from Europe, somewhere in the neighborhood, possibly a year ago.

Q. Would you begin with the first interview you had with him after he returned from Europe, from the first to the last, if you had more than one interview, and state to the jury what transpired, in your own way?

A. Yes, sir. I was in the Sheriff's office down stairs, on official business. It was in the afternoon, in the neighborhood of four o'clock, and on the other side of the corridor, opposite the Sheriff's office, is situated the Chief of Police's office, and I came out of the Sheriff's office, and Mr. Hawes called me, and I went on the other side of the corridor, and welcomed him back. He says to me, "I have been looking for you." I told him that I was in Court, and had been in Court all day, up to about that time, and says he, "I want to see you very particularly"—whatever he meant—I want to see you very particularly, and I have been looking for you. Says he "I want you to procure me a policeman, faithful, honest and intelligent." Says I, turning towards the door, "There is the Police office"—he stood

nearly opposite the Police office door, the Chief of Police office door. Says I, "There the Police office; go in there, and speak to the Chief." Says he, "Oh, they are all a d——d pack of thieves and robbers." Says I, "How do you expect that I can get you a man such as you desire, if that is so?" "Well," he says, "Your business brings you in connection with them, and there must be some man on the police, who, in degree, must be honest." Well, I looked at him, and I asked him what the difficulty was. He was all muffled up in one of those things you put around your neck, and he then said, it was a question of life and death with him, and that if I knew a man on the police who was energetic, faithful, intelligent, and could be trusted, that he would pay him better for the service which he proposed for him to do, than he was ever paid in his life, or something to that effect. "Well," I said, "there is a man on the police that has done a good deal of business for the Government here, through me, and I think he is very faithful, and I think he is a very intelligent man." He asked me what his name was, and I said his name was Ellis. He then put his hand up to his head, thinking for a moment, and said, "well, I don't know any such a man," and he says, "come and go with me to him." Said I, "He may be in here now," and I walked into the Chief of Police office, and inquired of two or three persons there, I don't know but the Chief himself was there, and they said that Ellis, they did not think would be there again until after his dinner. This was, I believe, in the neighborhood of about four o'clock. So I told Mr. Hawes—well, he was very anxious, seemed to be very nervous about it, and wanted me to see this man for him, and send him to his place on Folsom street, that evening. Well, I told him that I would write him a note, and he would be at the house as soon as he got the note. So I wrote a note to Ellis, telling him, in substance, that Horace Hawes had called upon me, and requested an interview with him, and that this letter would introduce him, as Mr. Hawes had requested that I should give a letter of introduction—he wanted to see the man himself; that was when I parted with Mr. Hawes; but during the time when he said that it was a question of *life and death*, and that he would pay him better than he was ever paid for any service in his life, or something of that kind, he then commenced about his wife, and indulged in a great many remarks, interspersed with a great deal of profanity, and I told him that I had no curiosity to learn anything about it. I told him that I had no curiosity to know anything about his family, or his troubles; that I would do anything I could consistently for him, but that I did not want to hear of that—he was very severe, and very emphatic in his language, and spoke of a band of conspirators. He did not know what moment he would be poisoned, assassinated and killed, and that his wife had engaged a lot of individuals, he did not name any one of them, to assassinate him, and kill, and poison him. Well, if you desire that I should use some of the language he employed, as well as I recollect, he said, that—d——n his soul! If it cost him every dollar of his fortune, he would bring them to justice—that they thought he was going to die, and he would let them see, by G——d, that he was not going to die, and that he wanted this man, whose character he represented to me faithful, devoted, etc., to do anything that possibly could be done to bring these parties to light, and it would be the best act of his life. He got quite violent, and very profane at times. Well, I gave the letter, as I told you; I left the letter for Ellis, and I

asked Ellis on one or two occasions, how he was getting along with that business. I merely asked him *en passant*. He never gave me any information, nor did I desire to get any. It was only a simple inquiry I made.

Q. Can you remember, so as to state to the jury particularly what he said with reference to Mrs. Hawes—what his language was with respect to her; not characterizing it, but giving the language?

A. I think, sir, I cannot be enabled to recollect distinctly in detail what he said, and I know that he employed language like this: "D—n her soul! she and her conspirators who are seeking my life should be brought to justice." I remember that perfectly well. I remember his denouncing her as a d—d villain, and the parasites that were hanging around her, all endeavoring to get his fortune, and that he was determined, if there was any law in the land, that they should be brought to justice. Well, he was very violent. I knew Hawes very well, you know, and did not pay very much attention to what he said. After he requested me to do it, I did it, and that is all I know about it.

Q. Did you ever see him again on that business?

A. No, sir, never; I think I saw him one day, but it was simply to pass the compliments of the day,

Q. What was his appearance when you first saw him, and if you saw any change in his appearance, color, or manner, or demeanor?

A. In speaking, or in——

Q. [Interrupting.] During your conversation with him?

A. Yes, sir. He was standing, leaning in something that style (leaning on the desk) upon an iron railing nearly opposite the door of the Chief of Police, and looking, I suppose, towards the Sheriff's office where I was, and as I came out he called me. I then went around and came to him, and shook hands with him, and he was exceedingly pale; and he had this muff around his neck, and a big coat on; but in his conversation with me he became in the violent portion of it very red, and was very emphatic in his language, exceedingly emphatic, he swore terribly at times. He said, I cannot exactly recall the words except in part—but that his wife was endeavoring to kill him—poison him, and she had a band of conspirators; and he said he had scarcely slept a wink at night for weeks, for fear of assassination, and it was a question of life and death, and he wanted this faithful, devoted man. It was which led me to inquire what the difficulty was, and when I found it was a family feud, I told him I did not want to hear anything about it; that I would do what he requested me to do, which I did.

Q. Did he appear to be entirely sincere and honest in his convictions?

A. Well, from his manner and from his language, I should think he was very sincere, thoroughly convinced of the truth of what he was talking about, so far as you could judge from language.

Q. What were Mr. Hawes's characteristics in that respect, general characteristics in that respect with reference to the views he had attained?

A. Well, that would involve a sort of psychological idea, which I hardly think I am capable of giving an opinion on. But I have known him very well for a number of years.

Q. That is the reason I ask you. I think you are well qualified to give that opinion?

A. He was a self-opinionated man. He was a very ignorant man, a very ignorant man.

Q. In what respect?

A. Illiterate. He was as illiterate as nearly any man I ever knew. He prided himself upon that monument which he called the Consolidation Bill. He looked upon his own opinion as the opinion of the world, and never spoke well scarcely of anybody. He did not seem to have any confidence in God or man. That is the idea I always had of him.

Q. From your acquaintance with him—what you previously knew of him, that is previous to this interview that you speak of, and from his language, demeanor, and expression, at the time of his interview, did you or not, form any opinion with reference to his soundness or unsoundness of mind?

A. Well, that, Mr. Barnes, I would not be willing to testify anything about. He was, as I told you, very violent, very profane, and seemed to be very determined to carry out this investigation as to those who attempted to assassinate him.

Q. It was rather a startling disclosure, was it not, to you?

A. Well, yes, it was. I don't think I would have taken the slightest trouble in the world about it, if he did not tell me it was a question of life and death.

Q. Did it make any impression upon your mind at that time, with reference to the truth or falsity of the statement?

A. Well, I thought it was false, of course; I have heard a great deal of talk about it here, and at Redwood City, where I was trying a murder case, with Judge Sawyer, of the Fourth District Court. I think we were there some twelve or fourteen days, altogether, and heard people talk about it here, as well as there, and I concluded that Hawes was laboring under some kind of delusion, as I have always heard the lady, whom I never saw, spoken of in very high terms.

*Cross-Examination* by MR. SAWYER—Q. At the time of this conversation there at the office below, did he mention—

A. [Interrupting.] It was not at the office below; it was in the corridor down stairs.

Q. In the corridor—did he mention anybody else besides his wife?

A. He did not mention anybody else. He said he knew who they were, but I did not have curiosity enough to inquire. He did not mention them to me, and I didn't have curiosity enough to ask. Mr. Ellis probably can give you all the information on that score.

MR. PRATT—Q. Can you fix the date of this conversation, or about the time that it occurred?

A. Well, it was shortly after his arrival.

Q. From Europe?

A. Yes, sir. He told me, to use his language, that "Europe didn't do a d——d bit of good." I had not seen him, you know, except that time.

Q. Is this the only conversation you had with him, after his return?

A. That is the only time that I have ever seen Mr. Hawes since he went to Europe, except one day in the street. I think I bowed to him; not to speak to him. That was the only conversation I ever had with him.

Q. And all of this conversation was with reference to that one subject, was it?

A. That was all, sir; to get the officer for the purpose; though I have had Mr. Hawes to call upon me many a time about other matters—lawsuits and things of that kind; but that was previous to his going to Europe.

Q. I understood you to express the opinion that why you said, or thought, or concluded that Mr. Hawes was laboring under some kind of delusion—

A. [Interrupting.] No, sir; I didn't say so.

Q. You did not express that?

A. No, sir; I said I should not like to express an opinion as to that. He was evidently very determined. He was very emphatic. He seemed aroused up to get this faithful officer to arrest his wife and these conspirators, so that they might be brought to justice, if it cost him every dollar he had in the world. I don't know but some of those policemen down stairs may have heard him, because we were right at the door of the Chief of Police.

Q. All of this conversation upon that subject was very coherent and intelligible—he seemed to understand what he was talking about?

A. Well, when a man is excited, there is rather an incoherency generally in his statement.

Q. What?

A. I think generally whenever a man is excited, there is not much coherence in his statements.

Q. Well, how was it in this particular case?

A. Well, he was not very coherent. Mr. Hawes, if you knew him, was a very profane man; very determined man; a man that looked upon the whole world as his enemies. He had no friends. He said he was a great friend of mine. I did not care whether he was or not; but he said I was, and I accepted of it. His great object was in getting possession of these conspirators, whom his wife had led on for the purpose of bringing them to justice; and, to do that, he was willing to pay the officer the best pay he had ever received in his life, if it cost him his whole fortune.

Q. He was pursuing that one object and purpose intelligently?

A. Yes, sir; that was the object, as I understood it.

Q. So far, then, as this particular subject matter was concerned, and that conversation, he seemed to understand thoroughly what he was about, and what he wanted to accomplish?

A. Well, sir, I should judge that he did.

Q. How long prior to that time had you had any interviews with him in regard to business, or other matters?

A. Well, it would be rather a difficult thing for me to say, because I probably had more business with him than any man in the State—officially—constantly engaged. One day he came to me crying, and met me at the bottom of these stairs, as I was coming up to the office, which is situated here in the adjoining room.

Q. How long ago was this, Mr. Byrne?

A. Well, I guess that is about a year previous to this interview, of which I spoke.

Q. That was before he went to Europe?

A. Oh, that was before he went to Europe.

Q. That is not material about that.

MR. BARNES—Go on.

A. He commenced crying, and he took me with both hands—took my one hand with both hands, and he said that he had been deserted



by the world. I was going up stairs to go into Court, and I had some cases before the Judge in the Court—the County Court—and he said he had been deserted by the world, and begged me, as a friend of his, to go in Court, and take up a case that was half tried, where he was charged with the commission of some offence—I think it was shooting a gun, a pistol, or something of that kind—that his lawyer had deserted him, and that they would have left him in for damages for untold thousands of dollars, may be, that might be recovered against him, for doing nothing—for it was a conspiracy got up against him by the Redwood City people. I told him in the first place, I could not do it; that I was engaged in Court as a public officer, and, secondly, that the man who was his counsel, was one of the leaders of the bar of the country, a man of the highest order of ability, and that it would be an insult for me to do a thing of that kind, and I could not do it, in justice to him. He cried like a child, and said that nobody was his friend, that he was deserted by the world. That was a case tried by a gentleman, a member of this bar, and, I believe, he succeeded afterwards; I didn't know whether he did or not. He happened to be engaged in another Court at that moment.

MR. BARNES—Who was the lawyer he charged with deserting him?

A. I didn't know as I should answer that. How's that, Judge?

THE COURT—I do not see that it is material.

MR. BARNES—I would like to know if he is a man of the character that Mr. Byrne says.

A. Well, sir, it was John B. Felton, a man of the highest order of ability.

MR. PRATT—Do you know, was there such a case in fact, pending?

A. Oh, yes, sir; there was a case of that kind pending.

Q. And it was then on for trial?

A. It had been partially tried, but, owing to some misunderstanding, or something, Mr. Felton happened to be in the U. S. District Court.

Q. And the case was going on without any attorney?

A. No, sir; the case was on. The case was on, and they adjourned to some hour, and Mr. Felton, in the meantime, was in the U. S. Court, and they had not adjourned, and Mr. Felton probably did not have time to get back to Court. It was a case of shooting, or something of that kind, where he was sued for damages.

MR. SAWYER—Did I understand you when you met Mr. Hawes in the corridor below here, in front of the Chief of Police office, and he asked you for a policeman, and you referred him to the Chief of Police office, and he said that they were all a pack of thieves and robbers?

A. That was about the substance, except that he employed an expletive.

Q. What?

A. That they were a pack of d—d thieves and robbers.

Q. Referring to the police?

A. Yes, sir. I thought it was rather illogical in him to ask me for a faithful, honest policeman, but he said in degree, there may be a man there that is not so bad, and I must know one. I told him as I told you, and I wrote a letter to Mr. Ellis.

Q. You said he was leaning with one arm on the railing.

A. Yes, sir, this way [illustrating], muffled up.

Q. What was the appearance of his face at that time?

A. Well, he looked like the genius of despair, looking upon the future. That is all.

ANN DOUGLAS, called for Contestant. Sworn.

*Examined by MR. BATES.*—Q. Did you know Horace Hawes in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. Five years.

Q. Where do you reside?

A. Tenth street, corner of Tenth and Harrison.

Q. On Mr. Hawes' property?

A. Yes, sir.

Q. How long have you lived there?

A. Six years.

Q. How often did you see Mr. Hawes?

A. Every day that he was in the city.

Q. What did you do for him, if anything?

A. I got him his meals, and took care of his rooms.

Q. Do you recollect when he returned from Europe?

A. Yes, sir.

Q. When was that?

A. July; the 18th of July I think it was, or the 17th.

Q. Well, did you do anything towards taking care of him then?

A. Yes, sir; I was at the gate till the carriage came to receive him.

Q. Well, state how long you took care of him from that time?

A. To about the middle of September.

Q. What was the condition of his health during that time?

A. Well, he was very feeble. He remained in the city over night, when he came in, and the next day went down to Redwood, and stayed there a few days. I don't recollect how long, but a very short time, and came back very much enraged.

Q. Did you have any conversation with him, or he with you rather, in regard to his wife?

A. Yes, sir; I asked him when he came back; he told me to be quick and get him something to eat, for he was starving; and I asked him, "How is that, Mr. Hawes? You have been down to the farm, and have had plenty to eat?" He said, "I have had nothing to eat but swill since I have been gone. I want you to give me something to eat;" and so I went and got him something to eat, and then he sat down and got to talking about his being down there, and he got to talking about Mrs. Hawes. He said he was afraid to have anything to eat, and he asked questions about her, and I said I did not like to commence to say anything to him, and I could not tell exactly everything that was done; and he was talking about her, and "Why," said I, "you must not be so hard when she has been so afraid for you all the time you were gone." "Oh, the devil! I would not admit her to lay her hand on me. The devil!" I tried to pacify him; but the more I tried to pacify him, the worse he got, and he got quite outraged with me.

Q. Did you not sit up with him many nights?

A. Yes, sir; I remained night and day with him from the time he came home to the middle of September.



Q. What was the topic of his conversation all the time—what did he talk about during the night?

A. Well, he would get up through the night; he would be up sometimes. I lay on a sofa, close to the bedside, and he had a little bell at the door that he called me with, and I would jump out of bed, and sometimes he would call on me to get cold water, and I would have to bathe his feet and legs in cold water. I would get a basin of cold water, and he would sit may be five minutes in that cold water, and I would get him in bed again, and have to bathe his head, and wrists and hands in the cold water; and then in a little while he would jump out of bed, and would get so enraged, and he would call out "The gallows!" so that sometimes I would be frightened; and, again, "That fiend of hell! She is poisoning me; that fiend of hell!" he would say. That is what he called Mrs. Hawes through his regular conversations with me in the evening, or "devil."

Q. What was he talking about previous to his jumping out of bed, and exclaiming "The gallows!"?

A. He sometimes would be asleep, or, at least I would think he would be asleep, and he would be talking to himself in a loud tone, and he would jump out of bed; and I tried to get him in bed again, and he would be outrageous, but the more I would coax him, the worse he was.

Q. How was he acting when he would jump out of bed?

A. He would run around and get into cold water—I used to take a large pitcher of water and let him bathe his feet, and knees, and legs in that cold water, I would get him in bed again, and put cold water on his wrists and head, and then rub him, to get him all warm like.

Q. Did he sleep much?

A. Very little. The only time he slept would be about from four o'clock in the morning until eight; not much. Through the night he would not sleep any at all.

Q. What did he seem to be afraid of, if anything?

A. He seemed to be afraid always, of getting poisoned; always made me look out of the window, especially when Mrs. Hawes had been in town. He could not bear anything in the house, even the towels; he would not allow me—he would not take my word, but I must bring them and show them to him as they were rolled up, and put in the drawer. Four towels was all he would ever allow me to use, lest she would come and get them; even the comb and brush, he would go around after them, and look out for "that devil," as he called her. He would say, "she is coming; look out, she will quiz you. Don't tell her anything that is going on," and he was all the time telling me to look out for Mrs. Hawes, lest anything should happen. And there was a piece of coral, and the bottles must all be arranged around that coral, so that he could sit where he was and see them, and there was no way that she could come to the table, and as soon as she was away, he wanted me to come and see if those bottles were as they were before, and he would let me take his glasses sometimes, to see that they were just so, just fixed so, that way.

Q. For what reason did he want you to look at these bottles?

A. For fear that she had changed one medicine. He said she would do it any moment in the world. He said that was all; she was seeing if she could not poison him, and get rid of him, and she was wishing what he should never get, he said. She could not get it.

Q. Did you cook for him, generally?

A. Yes, sir. When he ordered his meals, I would get them for him. If Mrs. Hawes was in town, I would cook them in my house, and set it for him on the grate. They had some tins fixed there, and I would set it on the hearth, so that he could see it, and I would get it out of the tins, and put it on tin plates for him, whatever it would be that he would tell me to get.

Q. Did he give you any reason that she didn't poison him?

A. Only she feared the gallows, and he would look up so [illustrating]; he would clap his head so, and he would say, "Oh, the gallows! the gallows!" looking up so wild, as if it was to see that it was close by.

Q. How did he appear then, calm or excited?

A. Oh, very excited, very excited, always. I never used hardly to speak to her, for he always quarreled with me if she was in town. He would always quarrel with me. I have had to pass her by, and I would not make him an answer, because I could not get along with him all the next night, lest he would think I had said a word to her, or she was in some way concerned with me, or I with her.

Q. Did he inquire, particularly, who had been to see her.

A. Yes, sir; he wanted to know. When he first came from Redwood City, he commenced to tell me, to ask me how it was that she came for to go into his apartment. She was there a minute or two in the apartment where he resided in, and told me that Mr. Bates, he said, had not done his duty, for he should have had a policeman, and had her arrested. The impudence of her to come into his private apartments; it was something he could not get over. Mr. Bates ought to get a policeman, and have her arrested, and he would ask me, "didn't you know that I told you to look around here," and I would say, "she came in Mr. Bates' absence." And he would say, "you ought to have went to Mr. Bates' office, and told him that Mrs. Hawes had the impudence to go into my apartments." I told him, "Oh, I didn't know that anything like that should happen," and I tried to calm him down, but it was no use. He would scold, and he commenced asking me about the furniture up-stairs. I told him there was a set of old furniture there, and it was all moth-eaten, and Mrs. Hawes brought it down stairs, and stood it there, and I didn't know, indeed, whether she had sold it, to get it out of the house, or did she give it away.

Q. How often did you hear him say that she would poison him—how many times?

A. I suppose I heard him all of twenty or thirty times from the time he came home. Whenever he would get really bad, he would always commence on that, for Mrs. Hawes used to come in to see him, and he would not admit her into the house at all. One time I went in and coaxed him. She was in the office, shedding tears, and she said to me: "Do," she says, "Ann, go in and ask Mr. Hawes if he would not let me come in and see him. I can't stand it any longer"—and I went in there, and there was a lady in there, and when she came out, I went in, and I said to Mr. Hawes, "Oh, Mrs. Hawes is out there, do let her come in and speak to you." So he looked in my face, and I kept coaxing him, and says I, "Pray let her come in"; and I kept coaxing, and he told me to tell her to come in. I would not go till he granted the request; and I went into the office, and Mrs. Hawes came

in and shut the door, and I left them in, for I was pleased that he had granted me the request.

Q. Why didn't you remain with him longer?

A. Well, he said that I told Mrs. Hawes something, and that as long as I took the part of Mrs. Hawes, I could not be his friend any longer. He told me, "You have told Mrs. Hawes"—well, he sent for me, and told me to sit down, and I sat down in the office, and he says: "Well, I am very sorry to see that such a long friend and good friend as you have been to me, that you have lost my friendship,"—and he told me first, I must make him no answer, and not attempt to defend myself at all. Then he told me that he was sorry that I had lost a friend such as he intended to be; that I should not have anything after his death; "I am not going to live long, but I do not like to say it lest they should know it in Redwood City"—and I sat listening, and did not say anything, and when he was done, he told me, "I will be a friend to you, but never the same friend as I would be, for when you took the part of Mrs. Hawes, as you called her, you lost me. So, good-by, and never see me any more unless about business; about the fences, or something like that on the property we are living on."

Q. What was it you told Mrs. Hawes, as he said?

A. I did not recollect anything of that kind. I asked him, "Will you tell me one word that I have told her?" and he said, "No, I will not tell you," and I told him that I never recollect telling her, for I was careful; that if ever he knew I had ever spoken a word to Mrs. Hawes, he would turn me right out, and I knew that he wanted some one to take care of him steady.

Q. How did Mrs. Hawes behave towards him, while she was there?

A. She always acted very kind, and done everything that she could do for him, if he would let her, and he told me that he would not permit her to leave her finger on him. He said he could not permit it.

Q. Did you sit up with him a great many nights?

A. Yes, sir; every night he was in the city, when he came home until I left him, every night and day. He would consent that I could go for an hour or two to my house to rest.

Q. Did he ever say anything to you about Mrs. Hawes' conduct being very bad?

A. He was cursing and abusing her. He did not tell me anything about her, only he would ask me several times, when he came back—he sat down one day and pulled up a chair, and he seemed to be a little good humored, and told me, "tell me everything that has transacted, for," says he, "while I was gone I heard of you." While he was gone, he told me, that his sister, Mrs. Martin, had been there, had come, and he told me how many miles it had been away, that he could hear a good act, that she said she was there at the gate one day, and was trying to open the gate, and I came along and fixed the gate, and, "I was very glad you were attending to the place, while I was gone." He asked me about Carrie Caldwell, if she was in the city with Mrs. Hawes, and I said, "Yes; she was going to the Normal school here, but a very short time, and was taken sick, and had to go back to Redwood City again, or to her father's, in Santa Clara. He asked me if I saw her and Mrs. Hawes talking together, the same as a daughter and mother would do, and I said, "what do you ask me that for?" "Why,"

he says, "that there never was a woman," he said, "in existence, could have the same gratitude towards another woman's child, as what Mrs. Hawes had to Carrie, if it was not her own;" and I looked at him so, and I said, "Oh, it could not be possible!" and he said, "Oh, the devil! They came across the plains together, and she was a baby, and she was called Caldwell, but she is Mrs. Hawes'." He would tell me that several times, and I have tried to persuade him it was not so.

Q. Did he ever say anything about Mrs. Hawes behaving badly with other men generally?

A. Well, he would commence, but I never would let him say anything about it. He would commence talking and I would always try to pacify him. I knew, at least I thought myself it wan't so, and I didn't wish him to be talking so about it. He has often told me about her being such a devil, and I told him—I would try to pacify him, for he got so outrageous and I would be so sick with him that I would not know what to do all night.

Q. How many hours do you think he talked and acted in that way from the time he returned from Europe in July, until September—how many hours or how many days?

A. Well, there was not a day scarcely that Mrs. Hawes was in to see him, or the minute any one came to see him, even acquaintances, unless it was some actual stranger that would call to see him, but what he commenced—something about Mrs. Hawes—and they would stay, if it was evening they would stay until eight or close on to nine—about eight or half-past eight was his time to go to bed, and after he would go to bed, what he would be trying to say would work on his mind and he could not go to sleep all night. He kept cursing, "devil, fiend of hell," and other times he would get up and walk or go straight this way [illustrating], and he says: "Oh I will see those under the green sod that would wish me under it." They would find, "I will be well yet," and he would straighten himself up. Sometimes he felt better, and he would show me how he could walk with his cane, and "he would see her under the green sod yet, that wished him under it."

*Cross-examination*—by Mr. SAWYER—Q. I understood you to say that all these conversations occurred after his return from Europe, did you not?

A. Yes, sir.

Q. I also understand you to say that you have been acquainted with Mr. Hawes for five years before his death?

A. Yes, sir.

Q. What was the extent of your acquaintance before his going to Europe?

A. I was his servant, waiting on him, getting his meals and taking care of his rooms.

Q. Before he went to Europe?

A. Yes, sir, for five years.

Q. Did he, before going to Europe, talk to you as confidentially as afterwards?

A. Well, not so much. He has talked to me before on several subjects, but not so bad as when he returned, for he was quite angry with Mrs. Hawes going into his rooms, and could not say anything bad enough about her because she went into his place. That is the reason he would have.

Q. Were you a domestic here four or five years?

A. Yes, sir. Every day he was in the city. I waited on him every day for that time.

Q. During this time that he talked to you, the conversation you have mentioned, was his little daughter at all at the house?

A. She would never stay, only when Mrs. Hawes would come in with Carrie there, or Horace. That was before he took him East.

Q. Did he speak any, after he came back from Europe—these confidential difficulties?

A. Yes, sir. Carrie has been in the house.

Q. Did he ever make any exhibition of affection towards that little girl?

A. Yes, sir. He thought a great deal of Carrie. He thought Carrie and Horace—he did not care, I think, so much, I think, for Horace in one way, for he thought more of his mother, and he would never—Horace would never give in. Always thought so much of his mother; but he thought a great deal of Carrie, more so I think, than he did of Horace.

Q. Did he make exhibition of that affection, after he came back from Europe?

A. Yes, sir.

Q. Did he wish her to stay with him?

A. He wished her to stay with him, but the little girl said he asked her several times to stay over night, and he would say, when she was there, "Won't you stay with Pa to-night?" and she would say, "Well, I will, if Ma will." And he would say, "No, you know Ma can't stay where I stay." Then she says, "If Ma can't stay, I can't stay." It would be just the reply; and he would coax her, and say, "Don't you know that little saddle I bought you down at Redwood," and he would promise what he would buy her; but she would say "No, no; I can't stay, but if Ma stays, I will stay." He would say then, "That shows you don't want to stay at all." But she would say "I will stay if Ma will stay," and he would say, "No, you know Ma can't stay." Mrs Hawes would go and take the little girl there and come, back at nine o'clock, and would go back again the next evening.

Q. As I understand you, you were a domestic in the house?

A. Yes, sir; for Mr. Hawes alone.

Q. But I am speaking of the time before he went to Europe; you were a domestic then?

A. Yes, sir.

Q. Your whole acquaintance then, was only through being a domestic in the house?

A. That was all.

Q. He made these disclosures entirely voluntarily on his part?

A. Yes, sir.

MR. PRATT—When did you go there?

A. I went there in 1854 or '5. It was in March, I think, 1855.

Q. In March, 1855?

A. 1855.

Q. At Mr. Hawes' house?

A. Yes, sir. Mr. Hawes was looking for some one to go down to the ranch; and he was looking for a man and his wife; and my husband did not want to go; and he kept me to stay at his place on Folsom street.

Q. You have a husband, have you?

A. Yes, sir.

Q. Does he reside in this city?

A. Yes, sir.

Q. What does he do?

A. He teams.

Q. How long have you been living in San Francisco?

A. I am six years in San Francisco.

Q. You first went there to live in 1865. How long did you live there that time?

A. I did not live out at his house. I had my own house all the time, for I went to live in a cottage; I had to be at his service when he called on me, and every time he came out there he would send the hack over to my house, and he would often stand on the stoop until I came and got him his meals and took care of his room.

Q. When did you first go there after his return from Europe?

A. I was at the gateway for him coming out of the carriage.

Q. Do you recollect what time that was?

A. That was July 18th, I think. I think it was on the 17th; it might be the 18th, or 17th; something like that it was.

Q. You did not live in the same house with him?

A. No, sir, I did not.

Q. How far is his house from your place?

A. I live on 10th and Harrison, and his is between 9th and 10th, on Folsom.

Q. That is about a block away?

A. Yes, sir, a little over a block; I can see from my house; and his signal for me to come was so that I would know he was there, he would open his window shutters, and I could see from out my door, that he was there.

Q. When his window shutter was open, you went there to see him. That was the signal between him and you?

A. Yes, sir; and if I didn't come he came for me. He left the shutters open so that I could know he was there.

Q. You commenced on the 18th July?

A. Yes, sir.

Q. What time did you leave? What day did you cease to wait on him?

A. I think it was about the 19th of September. I think it was about the 18th or 19th of September.

Q. Were you there? Did you see Mr. Hawes every day during that period—from the 18th of July to the 19th of September?

A. Yes, sir; I was there some part of the day. There was some others that he had assisting him when he was sick, and he would think I was so tired out I could not stand; but I had to come and see him every day.

Q. Were there any other servants in the house besides you?

A. Yes, sir; there were several there, but they would not stay only a day or two; but I was there back and forward.

Q. What physician did he have during this time?

A. Well, he had that French doctor—

Q. Do you recollect his name?

A. Dr. Fourgeaud. I came several times for him myself, on Kearny street.

Q. Was he treating him during all the time you were there?

A. Yes; that was all the doctor.



Q. Was the little daughter Caroline living there at this time?

A. No, sir; she did not remain at any time, only just a day or so at a time.

Q. You say he always manifested great tenderness and affection for his daughter?

A. Yes, sir.

Q. Was Mrs. Hawes living in the house during this time?

A. No, sir.

Q. Where was she living?

A. In Redwood city.

Q. How often was she there?

A. She was there mostly once a week. If he was very sick, she would perhaps would come twice a week.

Q. Once a week, and perhaps twice.

A. Perhaps more. I don't recollect; but I know she came to see him before he went East. His son Horace remained with us, so, as he said, he would not get so much attached to his mother.

Q. How many times during that period of two months that you were there did Mrs. Hawes see Mr. Hawes in his room?

A. I declare I cannot exactly say that I know. There was two or three weeks, I think it was, that he would not admit her into the room; but this time I begged of him to let her come in.

Q. Was she in there at all during that period—was she in there more than once?

A. More than that time?

Q. Yes?

A. Oh, yes, sir. After I went in she would come and see him. She didn't go home to Redwood City that night. She came two or three times, but he would not admit her in.

Q. Did she spend the most of the time in his room while she was there?

A. Yes, sir; in the room. I have heard her wanting to read to him.

Q. But he would not allow her to read to him?

A. No, sir; she has wanted to read to him.

Q. He was very sick during this time?

A. Part of the time he was, and part of the time he was not so sick.

Q. He was suffering a good deal with pain at times?

A. Yes, sir; sometimes he was. His temper made him be a great deal worse than he was.

Q. How do you know that?

A. He got so violent; I know the reason. He would scold and curse dreadfully; and then if there was any stranger come, or any one came in, he would just be as calm and good-natured as could be to them; and if he was talking to Mrs. Hawes or me, or any one that he knew he could abuse; when a stranger came in, he would be calm and nice; and I knew it could not be pain, if he could get over it so easily.

Q. Did you always remain in the room during the interview between him and his wife?

A. No, sir; I never would, unless she came in from Redwood city; and, of course, I went around in the room, doing the work.

Q. You say she was there once a week, or twice a week during the time that you were there?



A. Yes, sir.

Q. Whenever she was there she would spend the time in Mr. Hawes' room?

A. Yes, sir.

Q. You never remained in these interviews?

A. Not if they had any private interviews. If she came from Redwood City.

Q. You might remain?

A. Yes, sir. I always went in the office, and if there was anything to be said between him and his wife, I would stay away; and if he wanted me he would ring a little bell for me and I would come right in; for I knew then that I had permission to come in.

Q. Did Mrs. Hawes retire when you went in?

A. No, sir. She would be sitting in the chair then.

Q. You take back all you said before. You did remain in the room during some of the interviews between him and his wife?

A. There would be nothing private. Only she would come in there and talk, but there would be no private talk. Only he would ask her about the farm.

Q. You mean to say you remained in the room unless they had a private talk?

A. Yes, sir.

Q. When they wanted to have a private talk, who informed you they wished you to withdraw?

A. I would go out myself and would wait, and when he would ring the bell if he wanted me. I thought it was my place when a man and his wife were talking together, to go out.

Q. You always went out and remained out until you heard the bell?

A. Only when she would come from Redwood City, and maybe I would not be through the door when he would require for me to come again.

Q. What was the general conversation between him and his wife?

A. She would tell him how they were getting along at the farm, and how everything was coming along, and if there was anything, she would tell him, and he would tell her, "Just mind your own business, there was an agent there," and he snubbed her right up before she had half done telling anything.

Q. Did he used to inquire very particularly of the condition of things down at Redwood farm?

A. Yes, sir.

Q. What was going on down there at that time?

A. Well, she had commenced telling him about the farm and what was going on.

Q. Was not he engaged at that time in building extensively down there?

A. No, sir, not then. He had not commenced it then. He was talking about it, but had not commenced it.

Q. When Mrs. Hawes came there then, he inquired of her very particularly how things were going on down at the farm, did he?

A. Yes, sir.

Q. What else did he talk to her about?

A. Well, I did not hear him talk anything to her unless that she told him; perhaps she would tell him sometimes that Carrie wanted

something—mostly when Carrie would ask for something, if Mrs. Hawes said Carrie wanted anything, he would not listen to her. But if Carrie would say, "I want to get a pair of shoes or a new hat," he would always give it to her; but if Mrs. Hawes mentioned it, he would then say, "You are going to kill me, to torture me; don't you speak," and shut her right up.

Q. Did he ever make any inquiries of Mrs. Hawes at these interviews, about the persons down there—friends and neighbors?

A. No, sir; I never heard him ask about any one, unless it was the agent. He might ask about the agents; how the agents were coming along, or something like that.

Q. Did you ever notice anything anything particularly strange in his conduct toward her during the interviews?

A. Well, yes, sir. He was always very violent, and always was swearing and cursing.

Q. What do you mean by violent?

A. I mean to say that he used language that I would not expect any man to use to his wife, or to any person.

Q. Repeat some of the language.

A. Well, I could not do it; I don't wish to do it.

Q. It may be very true that you don't wish to do it, but you say he used violent language.

A. Well, it is not fit for a lady to sit by, and hear the cursing and swearing which he did.

Q. I want to know what he said to her. You say he was very violent. We want to know, and the jury want to know, so that we may be able to know what you mean by violent language.

A. It was not fit for any one to express.

Q. Can you remember any one of these expressions?

A. Yes, sir, I do. I heard it often enough to remember.

Q. Let us understand, generally, what you mean by violent language. Was it profane?

A. Yes, sir.

Q. Was it vulgar?

A. Yes, sir.

Q. How often did that occur?

A. Well, it occurred every time almost that he saw her; for he could not bear her in his sight. He could not bear the sight of her. He could not bear to see her when she would come in. He could not bear her, or any one that would come to see him.

Q. Was not that exceedingly disagreeable to her?

A. Yes, sir, it was very much.

Q. Why did you remain in the room?

A. He would not permit me to go away. Perhaps he would have me combing his hair, or fixing around, or washing his hands, or bathing his hands, or soothing his face with a wet towel, and I would be fixing around him, and he abusing his wife that way.

Q. When she went away, would he immediately become calm and quiet?

A. Yes, sir. Unless he would commence repeating it to me, the badness and the like of his wife, and, after a little, he would commence with me again then. And he would have to lay down to rest; he would be so exhausted over it, that he would have to rest a little while.

Q. He never made any attempts during these interviews, to use any violence towards her?

A. Well, he was not able; it was a good reason.

Q. Was he confined to his bed?

A. No, sir; he was in the chair. He would get up about eight o'clock and remain on his chair, and was not able to go around much, unless he was very angry at anything, and then he could go around.

Q. Whenever he was angry he could get around very briskly?

A. Yes, sir.

Q. But when not angry, he was very feeble?

A. Yes, sir.

Q. Did he receive any other calls from other persons, during the time you were there?

A. Yes, sir.

Q. Did you ever remain in the room during those interviews between him and other people?

A. No, sir; not unless he would call on me to go and get something, and then I would pass in and get it, or whatever it would be. I would be in the room sometimes back and forward, if he allowed me; but I did not think it was my place to stay while he would be in the room.

Q. Did you generally know the persons who called there during the time of your stay there?

A. Well, yes, sir.

Q. Who were they?

A. Mr. Bartlett was there mostly every day or so.

Q. What Mr. Bartlett?

A. Washington Bartlett.

Q. Mostly every day?

A. Yes, sir; pretty much.

Q. During the whole period you were?

A. Pretty near every day, I should think.

Q. Who else was there?

A. Well, Mr. Durkin came to see him, and Father Galagher came to see him.

Q. Mr. Durkin?

A. Yes, sir.

MR. BARNES—We will put him on the stand.

A. He came to see him, and there were several—when any one would come to see him, and they would promise to come to see him, and would not come, why he would get so enraged, and say, "I know that devil." If they did not come he would get so disappointed, and he would say, "I know that devil has been in from Redwood City to-day. I know she has been in, don't you see, because such a one, they know that they would come and stay an hour; and what pleasure it would afford me; and that fiend of hell has been in and prevented them from coming to see me."

MR. SAWYER—Who else was in the habit of coming there to see him, during that period?

A. Mrs. Durkin used to come most every day, and if she did not come he would send for her. And Miss. Clark, she came to see him a good deal.

Q. What Miss Clark was that?

A. I don't know, sir.

Q. You do not know her other name. Is she a married lady?

A. No, sir.

Q. Does she reside here in the city?

A. Yes, sir.

Q. Did she formerly live in Sacramento?

A. I do not know; I never saw her until I saw her at Hawes'.

Q. Who else was in the habit of calling there frequently, during that period?

A. Well, I don't recollect all who it was.

Q. You do not recollect any others?

A. Oh, yes, sir; there were others, but I don't recollect any one—I don't recollect them all.

Q. Do you know Mr. Stebbins when you see him?

A. Yes, sir; I know him, but Mr. Stebbins never was there in my time, that I recollect, excepting once, I think he was there in my time.

Q. Did you ever see Mr. Hawes at all, after the 19th of September?

A. I saw him three times or four; but no more than to go in and tell him on business—speak to him on business.

Q. What was your business with him, on that occasion?

A. It was to go in and tell him about the fence that was around Block No. 44.

Q. Was that the block on which you lived?

A. Yes, sir.

Q. How did he seem on those occasions?

A. I just went there and told him what I had to say, and just turned and walked out. He told me he would see to it, or send some one to see to it; or something like that.

Q. Did you ever meet Mrs. Hawes in his room on either of those occasions?

A. Yes, Mrs. Hawes I saw once, I believe, or twice; I know I saw her once sitting on a chair, and the nurse came to the door, that was there, and I spoke to her and told her what I wanted said to Mr. Hawes. He was very feeble, but he could not understand what I wanted, and he said to tell me to come in and tell him individually.

Q. How long was that before Mr. Hawes' death?

A. Well, I do not recollect, indeed, how long that was. I do not recollect. It must be two months, I suppose; six weeks; one month. It might be that.

Q. Mrs. Hawes was in his room?

A. Yes, sir. She was there sitting in the room at the foot of the bed.

Q. Was he calm and tranquil?

A. He was sitting up in bed with pillows behind him, and I told him what it was about the fence, and he said, "Well, I will see to it." That was all he said.

Q. What did Mrs. Hawes seem to be doing at that time?

A. She had the newspaper or a paper in her hand, and did not seem to be doing anything. It laid on her knee.

Q. How long did you remain on that occasion?

A. Only a few minutes, until I delivered my message and walked out again.

Q. Did you meet Mrs. Hawes in his room on either of those visits you speak of?

A. Except that; I don't recollect.

Q. Did you always go to his room when you called there?

A. Yes, sir; for I always went to tell him what it was. When I wanted to know anything about the fences. He wanted me to tell him what it was.

Q. Were you ever present at any interviews between Mr. Hawes and these gentlemen who called there?

A. No, I was not. I always went outside, unless that I would pass out and in, and hear a few words while I was passing back and forward.

Q. Did Mr. Hawes ever talk to you on any other subject than about his wife, during the time that you were there?

A. About what?

Q. Did he ever talk to you on any other subject about any business—hold any conversation with you, except with respect to his wife?

A. No, sir.

Q. Never talked to you about anything else

A. No, sir.

Q. You say you cooked his meals?

A. Yes, sir.

Q. You cooked them over at your house, and took them over to him, did you?

A. Yes, sir; and some I cooked in the house and some I would cook on the grate.

Q. Did Mrs. Hawes come over to reside at the house when you left?

A. No, sir, she had not come, for Mrs. Hawes, when I left there, she was at Redwood City.

Q. What was the occasion of your leaving his service?

A. Because he sent for me and told me that I had told Mrs. Hawes something. He would not tell me what it was. He said I had lost him by siding with Mrs. Hawes.

Q. Do you know after you left when it was Mrs. Hawes came there to reside?

A. I do not know, sir.

Q. When did you first know that you were to be a witness in this case?

A. I did not know it until I saw Mr. Bates. Mr. Bates subpoenaed me on last Friday night; I think it was that time.

Q. Did Mr. Bates pay you your fees; pay you anything for your service here?

A. No, sir; he just read this subpoena to me, and told me that I had to appear, I think, last Tuesday. Yes, sir; last Tuesday, at two o'clock, and he gave me my subpoena, and I have been here every day since.

Q. Did you ever have any conversation with Mrs. Hawes about what you would testify in this case?

A. No, sir.

Q. Did you ever have any conversation with any one?

A. No, sir.

Q. As to your testimony in this case?

A. No, sir.

Q. Any conversation with Mr. Bates about it?

A. No, sir, I did not say anything more. He asked me how long was it I had been with Mr. Hawes, and I told him. I told him a few

remarks that had passed about Mr. Hawes wanting him [?] to arrest Mrs. Hawes; that was about all that passed.

Q. How long did this conversation between you and Mr. Bates last?

A. It did not last more than two or three minutes, for I met him right in front of Mrs. Hawes' house. He just read it over to me, and it was pretty late in the evening, and I was in a hurry, and I suppose he was.

Q. You never told him what you knew about the case, or what you could testify?

A. No, sir, not altogether; I have said more now than I intended to say; but, of course, when I am here I am to tell the truth.

Q. You didn't know when you came here what you were expected to testify to?

A. No, sir, no more than I know now.

Q. Did Mr. Hawes pay you for all your services?

A. Yes, sir.

MR. SAWYER — You stated that during these interviews of Mrs. Hawes with Mr. Hawes, while you were present, that he often used language that was profane towards her. It may be very unpleasant for a lady like yourself to repeat it; but still we would like to have the expressions used by him on those occasions.

A. Well, he would say, "You damned bitch," and that would be the first word.

Q. Was that addressed to his wife?

A. Yes, sir.

Q. Anything else?

A. Yes, sir; and worse than that. He called her everything that he could lay his tongue to.

Q. Did he swear?

A. Yes, sir; swore.

Q. What would he say?

A. He would damn her soul, and see her burn in hell. He would live to see her burn in hell, the damned bitch.

Q. That was said to her in your presence?

A. Yes, sir; and all such language.

Q. Was there any provocation on her part for any such language addressed to her?

A. No, sir; there was not. She would not make him an answer; she would be trembling. She would say to me, "See how he is exciting himself, and he will be so sick after this."

Q. She would make no reply?

A. She would make no reply.

Q. Did she do or say anything before he swore to cause him to use that language?

A. No. She would perhaps say that she wanted something or other. She would perhaps say when the boy was here, that he wanted to buy a pair of boots, or the boots wanted to be mended; and he would curse her, and say she had come to tease and torture him, and that was all he could say.

Q. Was there any other expression of that nature you can remember?

A. Well, that is enough.

Q. We might as well have the whole, as we have started in.

A. That is about bad enough for a gentleman of Mr. Hawes' education and learning to have to say.

HENRY JOHNSON, called for Contestant. Sworn.

*Examined* by Mr. BARNES.—Q. How long have you lived in this city?

A. Fifteen or sixteen years.

Q. What has been your occupation?

A. A detective officer and special policeman.

Q. What was your business in July, and August, and September, 1870?

A. I was a special policeman and now.

Q. Where were you generally employed at that time?

A. By the Pacific Mail Company, by Wells, Fargo & Co., by the greater portion of the insurance companies, and by some of the other banks.

Q. Were you acquainted with the late Horace Hawes, deceased, in his lifetime?

A. I was.

Q. How long have you known him?

A. I have known him ever since I have been in the State.

Q. Did you have any transactions with him in the Summer of 1870?

A. I did.

Q. Would you go on and state to the jury, as near as you can, about the time?

A. It was in August, 1870, as near as I can recollect; in fact, I am sure of it. That on the Saturday evening, I was standing at Wells, Fargo's, somewhere about a quarter past seven o'clock, and Mr. Hawes, whom I was acquainted with—previous to that he came and he touched me on the leg with his cane, and I turned around and I said, "Do you want to see me?" and he said he did, so we walked up California street until we got to the back entrance of Wells, Fargo's, where the wagons go in, and he then said that he wanted to employ me in a private matter; that it was a very delicate subject that he was going to broach. It was, in fact, his wife that he wanted watched. I told him that I didn't care about having anything to do with that sort of business, and he then went on—he was very much excited, and went into a tirade, and said he had been and spoke to Mr. Byrne, the District Attorney, and he mentioned a certain officer to him. He didn't mention the officer's name; that the officer had either played him, or didn't do what he employed him to do, and he said, "Johnson, I know that you are a man of family, and you have got children, and I may speak to you as a good citizen, and I don't want you to do anything for me, of course, unless I pay you for it, and he then commenced into a long attack about his wife, and spoke very vehemently about her, and made use of language that I don't care about repeating, unless the Judge or jury want it. I told him that there were many men and many women in this community, that formed ideas about their wives and their husbands, and that he ought to reflect more on this matter. He was very excited, and talked very vehemently. No, he was certain and sure about it, and that money was no object to him; that he would pay me liberally, and as a man of family and a father, I ought to assist him in the matter, and that he was the father of the Consolidation Bill, and that, as I was a man of property, that he framed that bill, that it prevented a lot of



thieves from robbing us; that was about the tenor of the whole story. I then asked him if he had got any data, or where that he suspected that Mrs. Hawes was to go to; he mentioned Washington Bartlett. He said that he believed she met him. I told him that I didn't think Mr. Bartlett would be guilty of anything of the sort. However, it was no good to talk. He swung his cane around. I said, "Very well, where do you expect she will go to?" He said he thought she went to the Mead House, on the corner of Montgomery and Pine streets, and that he had understood that Mr. Bartlett had a room, or was acquainted with the lady that did have the rooms, and he did go there. I said very well. I told him then, I said, "This is your matter, it is not mine," and I says, "Of course, you don't want any one to know anything about the matter, only me." He said, "That is so;" and I said, "I have got to be paid in this thing, because I don't go and throw my time away for nothing." He put his hand into his pocket and pulled out six twenty dollar pieces, and gave me one hundred and twenty dollars. That was the understanding. I knew Mr. Bartlett very well. He also told me—I asked him where the lady was. He told me I could find her, or when she used to come up here she stopped at Mr. Ebetts, at the corner of Washington and Jones streets. Yes, that was the place, but I have a memorandum, if I had known sooner about this matter I would have brought it with me. Well, I was up there on the next morning and met him; that was about half-past eight o'clock. We remained there. We went on to Jones street; that is, south, and eventually a lady came out of this house, which he pointed out to me as Mrs. Hawes—that is the lady there [pointing.] She came out of Mr. Ebetts' house, and came down Washington street until she got to Kearny, and went along Kearny until she got to Sutter, and passed down Sutter and went into Austin's store on the corner of Montgomery and Sutter. She remained in there, I suppose, twenty minutes. She came out of there and then she walked along Montgomery street to California; she went down California, down to Sansome, and she remained at the corner of the Bank of California; there she met a lady there, I do not know who she was or what she was, and talked with her some time, and left her, and went along to the corner of Jackson and Sansome, and took the cars and went on the cars, and she got off the cars on the corner of Jackson and Stockton streets, and walked to Washington and went into the N. W. corner, this house that Mr. Hawes spoke to me about. I watched the house narrowly. I knew the house well, and Mr. Bartlett never went into that house. I think it was on the Thursday following that Mr. Hawes spoke to me after the Saturday he came to me, and said: "Johnson"—this was on the corner of Wells, Fargo's. He told me in the meantime if I learned anything to send him a letter, or address him a letter in the post office. He came on a Thursday—yes, it was on the Thursday, and he said: "I want to see you, Mr. Johnson," and we walked up California street to the same place where we had our first meeting, and he said: "Have you learned anything?" I said: "No, there is nothing in it that I can see. I don't believe there is anything. I believe you are mistaken about the matter." Then he said: "You can abandon the whole matter. I am satisfied," and he and me never spoke any more about this. That is all I know about this matter. This much I do know, that neither Mr. Bartlett or the lady never went to the place that he said they used to go. That I know.

Q. Did you have a man on that place to watch ?

A. Yes, sir. Neither her nor him didn't go to that place, that I know.

Q. What sort of language did Mr. Hawes use to you, with respect to his wife and Washington Bartlett ? What did he say ?

A. Well, as I said before, I heard a portion of the lady's testimony that was on the stand, previous to me going on. He made use of language that I would not like to repeat. He called her a "damned bitch."

Q. All I want you to say is whether it was with relation to an improper intimacy between his wife and Mr. Bartlett ?

A. Why, certainly, for he employed me for the purpose of catching her and Mr. Bartlett together.

No Cross-Examination.

MRS. R. J. COFFIN called for Contestant. Sworn.

*Examined by MR. BATES*—Q. Did you know Mr. Hawes, in his lifetime ?

A. I did.

Q. How long did you know him ?

A. About twelve years.

Q. I mean more particularly ?

A. About twelve years.

Q. Where do you reside ?

A. In this city.

Q. Were you intimate with Mr. Hawes and his family ?

A. I was, with his family.

Q. Did you frequently visit his family ?

A. Yes, sir.

Q. Did you see him during his last sickness ?

A. I did.

Q. About what time ?

A. Christmas.

Q. How did you happen to see him at that time ?

A. I heard he was very sick, and I went out there.

Q. About what time did you say ?

A. Christmas week.

Q. State whom you found with him ?

A. Who I found with him ? Mrs. Hawes.

A. How long did you remain with him, if any time ?

A. Well, I stayed with him a week.

Q. Did you have any conversation with him, or he with you, in regard to his wife, during that time ?

A. He did with me.

Q. Will you state how much conversation did he have with you about his wife ?

A. Well, he talked to me more or less every day.

Q. Will you state some of the conversation he had with you in regard to his wife ?

A. Well, he thought she was a liar and a thief.

Q. Anything else ? Did he say anything in regard to her fidelity towards him ?

A. Yes, sir.

Q. What did he say ?

A. He spoke of Parson Fitzgerald and Mr. Bartlett.

Q. What Bartlett?

A. Washington Bartlett.

Q. What did he say in regard to Washington Bartlett?

A. Why, asked me if I didn't think the little girl looked very much like him—if the little girl didn't resemble Mr. Bartlett.

Q. What did he think in regard to the little girl?

A. Well, he thought she resembled him very much.

Q. Did he make any allusion to who was the father of it?

A. He did.

Q. Whom did he say was the father of it?

A. Mr. Bartlett.

Q. How many times did he speak about that?

A. I cannot say positively how often.

Q. Did he speak about his friendship or enmity to Mr. Washington Bartlett?

A. They had been enemies, but I believe they were friendly at that time.

Q. How did he appear while he was talking about his wife?

A. Generally excited.

Q. Did you hear him say, during that winter you were with him, anything in regard to his liability to be poisoned?

A. I did.

Q. What did he say?

A. He was afraid that his wife would poison him through the Irish servant girls. He didn't think she would do it herself?

Q. He didn't think that she would do it?

A. But he charged that she would have done it through the Irish servant girls.

Q. Did he lay down any rule with regard to the Irish servant girls?

A. They were not to have anything to say to her.

Q. Did he allow his wife to go near him, or take care of him?

A. She was not there. She was there the first day I went out; she came Tuesday, and I think she left on Friday, to go to the ranch. I am not certain, I think so.

Q. You were there with him all the time alone?

A. No, sir; I was not.

Q. Was any other person with him?

A. Mr. Hall, here, Mr. Boyd. Mr. Parker was there one night, I think, and there was the nurse.

Q. Please state a little more fully what he said in regard to Parson Fitzgerald?

A. That he was the first man that made trouble in his family.

Q. In what way?

A. He didn't tell me.

Q. What did he give you to understand was the cause of the trouble?

A. Well, I judged from what he said that he thought that his wife and Mr. Fitzgerald were too intimate.

Q. In an improper manner?

A. Yes, sir; I judged so from the conversation.

Q. Did he say—did he speak plainly, and convey to you that idea?

A. That is what I understood. He did not say it in those words, but he let me think that.

Q. What was his tone of voice, and his language, during the time he was talking about his wife?

A. He generally talked excited; sometimes pretty loud, and other times not so much so.

Q. What was his language?

A. He did not use the best language when he was speaking of those things; sometimes he would swear; he would call her a fiend.

Q. Can you state some of the epithets he applied to her, so that the jury can understand.

A. Well, a damned thief, several times to me—she would steal.

Q. Did he seem to use much force in his expressions? I wish you would convey the idea to the jury, as far as you can by your testimony, just as his appearance and his conversation did to you?

A. Well, he would talk very much excited, and tell me all about her stealing from him, and thought she would poison him, but only through her Irish servant girls; swearing in the same time.

Q. Did he appear to believe what he was saying?

A. I think so; it was my idea that the man would not have expressed himself so, unless he believed what he was saying.

Q. Did you attempt to reason with him in regard to his delusion?

A. I did not.

Q. Why?

A. It was no use; he would have his way so.

Q. Did he ask you if you were a friend of Mrs. Hawes?

A. Yes, sir.

Q. What did he say?

A. He said I could not be a friend of both.

Q. How did he conduct himself as to decency while you were there?

A. He had very little decency.

Q. Did he have any at all?

A. I think not.

Q. Did he behave in such a manner that you had to speak to him?

A. He did.

Q. State what you stated to him?

A. That I should have to throw cold water on him. He wanted to know if [I] intended to kill [him].

Q. Will you please state what he did. Where was he during that time; was he sitting up or in bed?

A. He was in bed.

Q. Now please state how he conducted himself in bed. I will ask the witness one question, if he became excited in regard to his wife; did he wait to put on his clothes before he got up.

A. No, sir.

MR. BARTLETT—I object to that style of examining the witness.

Q. How long at a time did he talk about his wife when he would commence?

A. Well, I could not say how long.

Q. About how long?

A. Sometimes a half an hour; sometimes more, I should judge.

Q. You were the listener and he was the talker?

A. Yes, sir.

Q. Did he tell you what great plans he had undertaken or was going to do?

- A. Yes, sir.
- Q. What did he compare himself to?
- A. He said that Jesus Christ was the first, Bishop Alemany was the next, and Horace Hawes was the third.
- Q. Did he want you to go to Europe?
- A. He did.
- Q. What for?
- A. To take his wife away.
- Q. What did he want his wife away for?
- A. He did not wish her here when he died.
- Q. Did he say anything about your husband going away?
- A. Yes, sir.
- Q. What did he say?
- A. He said, if my husband would only run off with his wife to Mexico, he would make me the richest lady in the State.
- Q. How did he pronounce his name when he spoke, in comparison with other men's?
- A. His name.
- Q. Yes, sir.
- A. Honorable Horace Hawes.
- Q. Did he speak about his name living a long time?
- A. He did.
- Q. What did he say?
- A. Well, I could not repeat what he said. He said a great deal.
- Q. Did he talk a great deal on that subject?
- A. A great deal. He had a great deal to say about it.
- Q. Was Mrs. Hawes there during the time that you were there?
- A. She was there when I first went out.
- Q. How did he treat her?
- A. Well, she was there nursing him, cooking for him, fixing his food.
- Q. That is how she treated him. How did he treat her?
- A. Well, I did not hear him say anything unkind to her in her presence. It was only to me when she would be out.
- Q. From what you saw of his looks, and his appearance, and his acts while there, did it make any impression upon your mind, and did you form any opinion as to his sanity?
- A. Well, I thought he acted very strange.
- Q. Please answer my question. Did it make any impression upon your mind, or did you form any opinion as to his sanity?
- A. Well, I did.
- Q. What was it?
- A. I am not a judge of persons insane. I frequently said he was crazy, but I am no judge of crazy persons.
- Q. You think he was crazy on all subjects, or on certain things?
- A. Certain things.
- Q. What was one?
- A. His wife was one, and his money was another.
- Q. Are you well acquainted with Mrs. Hawes?
- A. I am.
- Q. Have you ever seen anything amiss or out of the way with her?
- A. I never did.
- Q. What has been her general conduct and course of life, as far as you know?

A. A perfect lady.

Q. What has been her treatment towards him, so far as you know?

A. Kind and affectionate.

*Cross-examination* by Mr. SAWYER.—Q. Did these circumstances you have related occur all at once, or during the time you stayed there?

A. I was there four days, and before that.

Q. He was in that state of mind during the entire time you were there, at intervals every day. Is that what you testify to?

A. Yes, sir.

Mr. PRATT.—Are you a married woman?

A. Yes, sir.

Q. Does your husband reside in this city?

A. He does.

Q. What is his business?

A. He is not doing anything just now, sir.

Q. Has he ever been in business here?

A. Yes, sir.

Q. What business?

A. Lumber business.

Q. How long ago?

A. Four years ago.

Q. What is his first name?

A. J. B. Coffin.

Q. How long have you resided in this city?

A. Fourteen years.

Q. How long did you know Mrs. Hawes?

A. About fifteen.

Q. How long did you know Horace Hawes?

A. About twelve years.

Q. You knew Mrs. Hawes then two years before you knew him?

A. Yes, sir.

Q. What were your relations with her?

A. Nothing but friendly relations—visiting.

Q. Any family connection in any way, by marriage or otherwise?

A. No, sir.

Q. Were you intimate with Mrs. Hawes and her family before her marriage?

A. I knew Mrs. Hawes, and I knew her sister.

Q. Where did you make her acquaintance in this country?

A. In San José.

Q. Visiting back and forth frequently?

A. Occasionally after she was married.

Q. Quite frequently, and on intimate terms with them?

A. Yes, sir.

Q. Did you visit her house often after her marriage?

A. I was there occasionally.

Q. How often, and how long—what were those visits, usually for a day, or a part of a day?

A. A part of a day; sometimes all day.

Q. Sometimes longer?

A. Sometimes a very short call.

Q. You went on the occasion you have spoken of; I believe you said you went there about Christmas?

A. I did.

Q. And remained about a week ?

A. I went away once a day; I went home. I was there every day for a week.

Q. How long did you usually stay ?

A. I staid all day and all night, with the exception of about an hour through the day that I went home, probably an hour and a half.

Q. The balance of the time you spent there ?

A. Yes, sir.

Q. Mrs. Hawes was there when you first went there ?

A. Yes, sir.

Q. You found her nursing and waiting on Mr. Hawes ?

A. Yes, sir.

Q. Cooking his food, taking care of him, administering medicines, etc. ?

A. Yes, sir.

Q. What was his physical condition at that time ?

A. He was weak.

Q. Did he ever object to taking any food or medicines from Mrs. Hawes ?

A. I did not see it.

Q. Did you spend the most of your time in the room with him ?

A. I did, except when he had company, and then I retired.

Q. What portion of the time did Mrs. Hawes spend with him ?

A. Mrs. Hawes went away on Friday, and she did not come back any more while I was there.

Q. And what day of the week did you go there ?

A. Tuesday.

Q. Tuesday evening ?

A. Yes, sir.

Q. What portion of the time from Tuesday to Friday did Mrs. Hawes spend in his room ?

A. She was back and forth in the room providing his food.

Q. Did she sit down in his room sometimes and remain there for same time ?

A. She was doing his cooking at that time.

Q. She was treating him in every way as a wife would under ordinary circumstances ?

A. Yes, sir.

Q. During that time, you saw no manifestation of unkindness on his part to her, directly ?

A. No, sir.

Q. It was only when she was away.

A. He talked about it.

Q. He talked to you about her ?

A. Yes, sir.

Q. Who introduced these conversations in her absence, you or he ?

A. He did.

Q. Did Mr. Hawes, during the time that you were there, talk to you on other subjects ?

A. Yes sir, he did.

Q. He held general conversations with you about other matters ?

A. He did.

Q. On those occasions did he seem to be excited, particularly ?

A. Sometimes he would.



Q. But usually the excitement which he manifested was only in reference to his wife, when he spoke of her?

A. Then he always seemed excited; yes.

Q. But as soon as she came into his presence he became calm?

A. He allowed her to wait on him, so far as I could see, when she did come in.

Q. Who else was assisting, if any one, at the time, in waiting on him and taking care of him?

A. There was a nurse there, she stayed only one night.

Q. Did he have any physician at that time, attending on him?

A. He did not.

Q. He did not have any physician?

A. Not then.

Q. Was he in such condition as to spend the most of his time in bed then?

A. Well, he was for the first two or three days.

Q. Then he got better?

A. Got better and went out riding.

Q. Who were the visitors to the house during the time that you were there?

A. I could not say. The boy generally announced the visitors.

Q. They were strangers to you, were they?

A. Yes, sir.

Q. Were there many frequent callers, during that time?

A. Not a great many.

Q. At whose solicitation did you go there on that occasion?

A. I heard that he was very sick, and went out there merely to see him.

Q. You, on your own motion, without being called on by any body?

A. Yes, sir.

Q. After you got there, at whose solicitation did you remain?

A. At Mrs. Hawes and Mr. Hawes both.

Q. They both desired you to remain there?

A. Yes, sir.

Mrs. C. A. Harmon, called for Contestant. Sworn.

*Examined by Mr. BARNES*—Q. Where do you reside?

A. On Franklin street, between Post and Geary.

Q. What is your occupation?

A. I am matron of the Ladies' Protection and Relief Society.

Q. How long have you been there?

A. About ten years.

Q. In charge of that institution?

A. About ten years.

Q. Did you know Mr. Hawes in his lifetime?

A. I did.

Q. How long before his death, were you acquainted with him?

A. I knew him personally, for about ten years.

Q. Did you know Mrs. Hawes?

A. I did.

Q. What were your relations usually, with the family?

A. I came to California with Mrs. Hawes, and I regarded them as almost my only friends here.

Q. Did you visit their house ?

A. I did.

Q. To what extent—often ?

A. Not very often. My duties as matron prevented me.

Q. Did Mr. Hawes call upon you at your house then, the Ladies' Protection and Relief Society ?

A. He never called there but twice, on Franklin street. I was sick at one time on Tehama street, and he called there frequently during my sickness.

Q. During your acquaintance with them, did Mr. Hawes ever have any conversation with you in respect to Mrs. Hawes, and the differences with her ?

A. Yes, sir.

Q. Won't you state, as near as you can recollect, when he first talked to you on that subject ?

A. I think it is about three years since he first mentioned the subject.

Q. That was then some time before he went to Europe ?

A. That was before he went to Europe; yes, sir.

Q. Did he require anything of you, and, if so, what ?

A. That he sent a telegram to his sister, Mrs. Martin, to come to this country. He said that I had got to decide—I had got to make up my mind to be his and his sister's friend, or Mrs. Hawes', and I belonged to his family, and I ought to side with him.

Q. You ought to side with him ?

• A. I ought to side for him.

Q. What did he say to you, with reference to difficulties or differences with his wife, which made it necessary for you to take sides one way or the other ?

A. He said so many things I could not recall.

Q. Well, as much as you can, please, Mrs. Harmon ?

A. He said she was not a proper woman for me to associate with, and her associations were low.

Q. Did he ever say anything to you with reference to her fidelity to him as a wife ?

A. In speaking of his will, he said he should provide for little Horace.

Q. What did he say about the other one, Carrie, if anything ?

A. He said that Horace was his child; he should do everything he could for him.

Q. What did he say about the other one ?

A. I cannot recall what he said ?

Q. Did he say anything about her, in connection with any person ?

A. I said that Carrie looked very much like him, and then he mentioned somebody else that she favored.

Q. Whom did he say ?

A. He did not call any names.

Q. Well, what did he say ? Whom did he say she favored ?

A. He did not call any one.

Q. Whom did he give you to understand—did he give you to understand that there was somebody whom Carrie favored ?

A. Yes, he did.

Q. Who ?

A. I think it was Mr. Loughborough; he did not call his name, but that is what I gathered.

Q. Who was Mr. Loughborough ?

A. He is a young lawyer, in his office at the time we came to California.

Q. Mr. Loughborough was a young lawyer who was in Mr. Hawes' office ?

A. Yes, sir.

Q. Did he express any determination to you, as to whether he was going to give Carrie anything or not in his will ?

A. I gathered from his conversation that he did not intend to leave her anything.

Q. Did you gather from his conversation what the reason was, why he did not intend to leave her anything ?

A. Because she was not his child.

Q. I will ask you whether, during all your acquaintance with Horace Hawes, you ever knew or heard, except from him, any fact or circumstance, connected with her life and career, which could furnish the slightest ground for accusations against her character ?

A. Never; she is a lady entirely above suspicion.

Q. How is she esteemed by her acquaintance and friends, ladies ?

A. I think she is liked very much.

Q. I do not mean a reference to affection, but with reference to character and respectability.

A. I thought I had answered that.

Q. I put the question to you the other way. How is that among her friends ? You have expressed your own opinion, now I want to widen the question a little. Perhaps you do not understand me. I asked you your own opinion, and now I ask you how she is generally esteemed by ladies in the society in which she moves.

A. I have never heard a word spoken against Mrs. Hawes.

Q. Did Mr. Hawes ever express any views to you with reference to himself and his own personal greatness and grandeur, as compared with other noted characters in history ?

A. I have heard him compare himself with Jesus Christ.

Q. What did he say in relation to himself and the Saviour of mankind ?

A. He said Christ was persecuted, and so was he.

Q. Did you have any discussion or reasoning with him, about that sort of language ?

A. I never tried to reason with Mr. Hawes.

Q. Why not ?

A. He would not listen to reason.

*Cross-Examination, by MR. PRATT*—Q. Did Mr. Hawes ever speak to you on more than one occasion about the fidelity of his wife, and the paternity of his children ?

A. I think never but once.

Q. Never but once, and when was that ?

A. It was over two years since; he was speaking of his will and his property.

Q. Have you seen him frequently since that time ?

A. I have not.

Q. Have you seen him at all, since that time ?

A. I have had some conversation with him once since then.

Q. What was that conversation about ?

A. About four weeks before his death, Mrs. Hawes sent for me, and he was at his house on Folsom street, and Mrs. Hawes was out when I went in. He did not ask me—he merely spoke to me, and did not ask me to lay my hat off or to sit; but I staid until Mrs. Hawes came, and he got very much excited about Mrs. Hawes. She came in and handed him a paper while I was in the room, and I cannot tell all that he said to her.

Q. How long were you there at that time?

A. About an hour, I should say.

Q. That, you say, was about four weeks before his death?

A. I should think it was about four.

Q. Do you know what the papers were she handed to Mr. Hawes?

A. It was a note from the office. A gentleman called and left a note, and he dropped to sleep, and she came in and brought it in.

Q. Have you been connected with this Ladies' Protection and Relief Society ever since its organization?

A. No, sir.

Q. You say that he spoke about the little girl resembling somebody else?

A. He did not mention any one's name; he did not call any names.

Q. What did he say, from which you arrived at the conclusion that he meant Mr. Loughborough?

A. Well, I think he called my attention to it—that Mrs. Hawes had had some business transactions with him at the time he was at Sacramento.

PETER HARKANS called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. How long have you lived in San Francisco?

A. Off and on since 1851.

Q. What has been your occupation?

A. My profession is a mariner, sir.

Q. Do you know Mr. Hawes?

A. Yes, sir.

Q. Were you in his employment?

A. I was, sir.

Q. From what time to what time?

A. I think it was in March, 1868, sir, up to July, I think.

Q. March to July, 1868.

A. Yes, sir.

Q. Four months?

A. Four or five months.

Q. Where? At what place?

A. I was at Folsom street taking care of his property there; library and office, and from there he took me down to Redwood City with him.

Q. How long were you with him here before you went to Redwood City?

A. The first day I went to him, sir, I went to Redwood City and came back to San Francisco on that evening again, sir.

Q. You went there and came back the same day?

A. That day, sir.

Q. How long did you remain here?

A. I remained here, sir, for about three months.

Q. Then, when did you go to Redwood City?

A. I think it was the last month, sir, I think I was with him, that I went to Redwood City.

Q. During the three months that you were with him, here in town, where did he live?

A. He lived in Redwood City, sir. He used to go to Redwood City, but come here sometimes to the office on Folsom street.

Q. And that was where you staid?

A. There is where I staid, sir.

Q. During the time you were with him, either here or in Redwood City, did you have any opportunity of observing his manner, conduct, and language towards his wife?

A. Yes, sir, he used to talk to me a great deal about her.

Q. He used to talk to you about her?

A. Yes, sir.

Q. What did he say about her?

A. He told me to never allow her in his bedroom, and to tell her when she was here that he had the key; for me always to keep it locked.

Q. What reason did he give you for that?

A. He gave me no reason.

Q. What else did he say to you about her?

A. He told me never to allow her to go near any of his medicine, and he would take no medicine from any person but me, and whenever I brought it to him, he always asked me if I mixed it myself, and I told him yes.

Q. Did he ever say anything to you on the subject of being poisoned?

A. No, sir; but he told me that there was a lot of vampires around after him, and they were plotting against him.

Q. In what way were they plotting? What to do to him?

A. To take his life, sir.

Q. When you went there to Redwood City, what instructions did he give you with reference to Mrs. Hawes there?

A. He told me I had to lock the gates all around the property at night out there, sir, and he told me always to go and see what there was out in the hen-house, to count the eggs and things before Mrs. Hawes would go out and get them in the morning.

Q. To go on and count the eggs in the hen-house, before Mrs. Hawes could get out to them in the morning?

A. Yes, sir; and he said to me "Peter, you must look out for me now; there is no person to look out for me but you; I can't let any of them near me; I don't want none."

Q. What was his treatment of his wife, as you observed it? How did he speak to her, and act to her?

A. He used to speak to her very rough, sir, when I would see him speak to her.

Q. How?

A. He would often check her not to speak until she would be spoken to—to wait until he had done talking, and I will tell you when to speak.

Q. He would tell her when to speak?

A. Yes, sir.

Q. When he talked in that way, how was his manner toward her, and his tone of voice?

A. He appeared to be to speak rough, sir, and he appeared to be vexed with her, sir.

Q. What sort of service did you render him, while in town?

A. I was to look after the property, and if any fences were down to repair them and have them fixed up, take care of his library and his office up there on Folsom street, sir.

Q. During the time that you were there, did you observe anything peculiar in his manner of attending to business?

A. He never used to attend to but very little business; Mr. Bates done all his business. The first two or three weeks that I was with him, he ran into the office in a hurry one afternoon, and he snatched the shawl that he used to have muffled around him, and he ran out the back way and ran for the railroad, the depot, and after he went, I went into the room, sir, and the room was strewed with money, all over the floor, and I made the remark in my own mind, says I, "this man thinks that I am going to steal, now," and I gathered up all the money and moved the chairs and sofa and swept the carpet to see if there was any more on it, and I took the money and counted it, and put it under a clock that was on the mantelpiece. It remained for about three weeks and he had not come from Redwood City for three weeks, and the morning he came, he bid me good morning in the library—his office. He asked me how everything was around the property, "how is everything on block forty-four, Peter?" I said "everything is right," and he passed through into the other room, and after he did, I went in after him, and told him, "Mr. Hawes, I am not going to stop with you, sir," he asked me why, says I "you have placed money all over the floor, and scattered it all over the floor to see if I would steal your money. I have been recommended to you, sir, and if the recommendation that has been given to you of me is not sufficient, I don't want to stop with a man that will think I will steal from him." He said, "What, sir? I left no money, I put no money in these places." "You did, sir," I says, and I went to the clock and took it out from the clock, "and here is the money I found on the carpet, to save scattering all over the floor." "No, sir; you are leagued now," he says, "with the rest of them. I have got a man now, he says; that man knows how to use me," and he says, "they are planning now, he says, for to take you away from me, Peter." "I don't know, sir," says I, "this money is not mine." He says, "It is not mine, I never left it there; I never put it there. You keep it, Peter, for anything you see wants doing; use it in that respect, but keep an inventory of it in your book." I walked out of the place, and did not touch the money, but he made me take the money afterwards, and expend it on the fences and everything around the place. Sometimes he would discharge me three or four times a day, and I would look at him and would be afraid to answer him, I would not know what to say, for fear I might say something wrong, and before I would get out of the door he would call me back, and tell me to go and look after some blocks, to see if everything was right on those places.

Q. Did he ever talk to you about there being a conspiracy to assassinate him, and all that sort of thing?

A. Yes, sir. He told me he had no friends in this country, and he said he thought I suited him, and to look out for him, and he would look out for me.

Q. Did he say anything about there being plots?



A. Yes, sir. He told me not to let Mrs. Hawes know where I got the toast for him, or where I used to get medicine for him, not to let her know, or let none of these people; that there was a great number of people coming around him. "Always change the place, Peter. Don't put it always in one place; they may be watching of you." He came there one day, and he had never eat a bit the whole day, and in the evening, when I was going away, I was about to bid him good night, and he said, "Peter, come in." I went to him, and he gave me ten cents. He says, "you go and get me ten cents worth of this German toast. Now, you know what toast I mean, do you?" I says, "No, sir, I never seen none of it." "Well," says he "you go to a German bakery, and get me ten cents worth of toast, and bring it here to me," and I did, and brought it to him. "Where did you get that, Peter?" I told him. "Don't you tell now, and the next time don't you get it there, but go somewhere else." I told him I would, sir. Another time he gave me—he came in the morning into the office, and bid me good morning. I bid him good morning. I asked him how he was. He says, "I feel a great deal better to-day, Peter; I am glad I have got away from that place. There is a lot of fiends from hell in that place where I have come from."

Q. Which place?

A. Redwood City, sir. He says, "Peter, take this letter to Mr. Bates, and tell him I want to see him immediately." I was going out, and he asked me if I had any car tickets. I said no, I did not want a car ticket, that I would go quicker on foot. I came down to Mr. Bates' office, and I went in, and Mr. Bates was not there, and that big man that was examined yesterday, was there.

Q. You mean Mr. Putnam?

A. Yes, sir. I did not know what his name was, and I handed him the letter, and told him to tell Mr. Bates when he came in, that Mr. Hawes wanted to see him immediately, and, for fear that I would be long away, I would not take the car here at the Plaza, I ran all the way up to the place again. When I got there, says he, "Where have you been, Peter." "I have been to Mr. Bates' with the letter your Honor gave me." "Letter, I gave you none. You damned scoundrel, you run off." "There was, sir," I says to him. "No," says he, "damn you, you lie, you were not. What," he says, "are you leagued with them vampires to murder me?" I looked at him and could not speak; I was all over perspiration after running, and "I went to Mr. Bates with the letter, sir; I din not see him; I saw that big man there," I says. "Big head, big head, and nothing in it," he says; "Bates is a damned fool," he says. "You damned scoundrel, I didn't give you a letter." I says, "You did." "How dare you answer me." "I don't want to stop with you no longer; you'd have me as crazy as yourself." I reached for my hat, and he called me back, and he says, "Peter, how is everybody on Block 44." I looked at him. I didn't want to stop any longer with him, and he would not discharge me. He would not let me go. He said I was the only man that knew how to do anything for him.

MR. BARNES—This time he alluded to Mr. Putnam's head, and its lack of contents. Did he speak of Mr. Bates?

A. He said Mr. Bates—they are no lawyers at all. They don't know anything. They would all starve to death, he says, only for me.

Q. Did he ever give you any instructions, in relation to the purchase of houses?



A. He did, sir.

Q. Tell us about that, and what happened?

A. He told me when I would be down town, if I saw any old houses moving anywhere, to find out what the price of them was, and buy them and put them on Block 8, and have them removed on to Block 8, and he will buy everything and he says we will make money by and by, off that place. He said you will be of great service to me by doing so. When I saw a house moving anywhere down town, I would ask the people what they paid for it, and if they wanted to sell it, and I would tell him there were houses in such a place, that were to be sold and moved from there, "What houses? I don't know anything about houses." "Why, you told me, Mr. Hawes, to inquire around." "I know nothing about it; why, you are crazy; you don't know what you are doing."

Q. When you had thus reported to him in relation to the prices of moving houses, and he denied that he had ever said anything to you on that subject, did he then say anything, because you and he differed on that subject, about your being in league with anybody?

A. He told me that I was in league with the rest of them. He did not tell me who, sir.

Q. How often during the time that you were with him, did he allude to these conspiracies against him and the leagues against his life?

A. Very often, sir, when he and I used to be alone, he would call me in there and begin to talk about them, and sit down on the sofa and tell me what good he was doing in the community, and how they were trying to take his life, and abusing him. He says he allowed he had no friends in the country at all; every one was his enemies, and was trying to rob him and to murder.

Q. How did you finally come to leave him?

A. He was thinking of going to Europe, the morning that I went out to open all the gates around the place, and when I came back—

Q. This was at Redwood?

A. At Redwood, sir; and when I came back he called me to his window and told me to clean his clothes, and pack them in a trunk, and go to San Francisco and get ready for to go to Europe with him, and I did so, and I went away from the room then, and went to the room where I lived myself, and I was a very few moments in it, and he called for me again, and when he called for me I went to his window again, and he looked at me and he says, "Peter, I am not going," he says, "You will not suit me no longer." "Very good, Mr. Hawes," I says, "How much do I owe you?" says he. I told him, and he handed it to me out of the window, and I left that afternoon.

Q. He handed it to you out of the window?

A. Yes, sir.

Q. That was the last you saw of him?

A. That was the last I had to do with him until he sent different times for me to go to him again, but I could not go to him.

Q. After you received from him, when you went to Redwood City, any instructions to go out and count the eggs in the hen house, before Mrs. Hawes got out of bed, did you use to do it?

A. Well, sometimes, sir, and sometimes I would not.

Q. Did he ever make any inquiries of you as to whether you had found the eggs?

A. Yes, sir, he most always asked me.

Q. What would he say to you?

A. "What did you see to-day, Peter? What was there to-day?" Sometimes I would tell him less, and sometimes more, and sometimes I would not be there at all.

Q. How do you mean, sometimes less and sometimes more?

A. Sometimes I would say a certain number of eggs, and sometimes I would say there was not so many. I used to forget myself to go there.

Q. Did he ever forget to ask you?

A. Well, sometimes he would not ask me; he would not think of it.

Q. Was there anything he told you to look out for beside the eggs?

A. He was telling me to look out for the place all around there, and see that there was no person stealing there; there was a great deal of thieving around there, and to look out for him expressly.

Q. I mean anything else but eggs that he wanted watched before Mrs. Hawes got around, or did he confine himself entirely to eggs?

A. Eggs, and fowl, and different things around. He wanted me to look out for everything around there.

Q. You said that he discharged you and hired you over again, sometimes?

A. Sometimes he would discharge me three or four times of a day, sir.

Q. What would he say to you at such times?

A. He would tell me that he did not want me no longer; that I was no service to him; and before I would get out of the door, he would call me back and employ me.

Q. During the time you were with him, how many times do you suppose he discharged you?

A. I should think he discharged me about forty times.

Q. What?

A. I should think he discharged me about forty times, to the best of my belief.

*Cross-examination by MR. PRATT*—All these circumstances and events you have spoken of occurred between March and July, 1868, did they?

A. Yes, sir.

Q. You never had any intercourse or business with Mr. Hawes after that?

A. No, sir.

MRS. LIZZIE HUGHES called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. What is your Christian name?

A. Elizabeth.

Q. You are the daughter of Dr. Caldwell, who testified here this morning?

A. Yes, sir.

Q. And a niece of Mrs. Hawes?

A. Yes, sir.

Q. How long did you know Mr. Hawes before his death.

A. Since 1855.

Q. Where?

A. At my father's house in Santa Clara.

Q. Did that acquaintance continue up to the time that he married your aunt Caroline?

A. I saw him only a few times.

Q. Before he married your aunt?

A. Yes, sir.

Q. After that time, how much did you see him?

A. I saw him frequently. I was at his house occasionally a month at a time.

Q. Did that intimacy continue from the time of his marriage to your aunt, and up to his going to Europe?

A. Yes, sir.

Q. On what sort of terms were you with him?

A. He was always very kind to me.

Q. Did he talk much with you about his family affairs?

A. Yes, sir; he did about November, the first time was November, before he went to Europe.

Q. Do you remember a conversation had with him in the month of April, 1869, at your father's house, in Santa Clara?

A. Yes, sir.

Q. Won't you state what that was?

A. He became very much excited in the morning at my father, and he remained alone the fore part of the day, until about one o'clock, he came in the family sitting-room and asked me to go in the parlor, he wished to talk to me.

Q. Well, what transpired there?

A. He talked a great deal on religion, and general talking.

Q. What did he say to you on the subject of religion?

A. Well, he quoted a great many passages from Scripture, that the Catholic religion was the only religion; that all the arguments the Protestants could bring against it were like chaff thrown against the wind, and from that, he went on speaking of his wife's affairs and the education of his child Horace, and abuse of persons in general.

Q. Go on, and give the conversation, as near as you can. Did he talk about his children to you at that time?

A. Yes, sir; he talked a great deal to me about his children, especially about Horace; his distress in living, and knowing that he would die before the child was grown or educated; that the mother was teaching him to lie and steal, and deceive him; and the child was present, himself during the conversation. He was punishing him, making him stay in the house all the time.

Q. He had him under discipline that time. Do you know what for?

A. He had a new pair of boots that did not fit him, and he threatened to put peas in his boots if he complained any more about his boots. He had a pair of boots that did not fit him, and Mr. Hawes said that he would put hard peas in them and keep them there for a week, if he complained of being kept in the house.

Q. Did he say anything to you about his plan upon which he proposed to educate Horace, at that time?

A. Yes, sir; he said that his mother never should have him, that he intended to take him away and find some competent person to take charge of the child's education.

Q. What was the reason that he gave for separating this boy from his mother?

A. The influence that the mother was having over the child.

Q. Of what sort was it, did he say?

A. Well, she was teaching him to lie, and to deceive him.

Q. What was the cause of the difficulty between your father and him, that you spoke of? You said he had a difficulty early in the morning, and remained in solitude nearly all day. What was the difficulty?

A. He asked my father early in the morning, to get the child a pair of boots. He took him down to get the child the boots; he examined some, and they did not do, and he told the boy to take the boots to his father, and see if they would suit; and child-like, he did not understand, and put the boots on and wore them to school, and when he came home his father saw them, and became indignant.

Q. What at?

A. At the boots.

Q. What was the matter with the boots?

A. I don't know. He said they were too large; I didn't see anything wrong with them.

Q. What was his language and demeanor to your father, on that occasion?

A. Well, I was in the next room. I only heard part of the conversation; it was very insulting. He told my father that he would not speak to him on the subject, and he didn't believe what my father had said to him.

Q. He didn't believe what your father had said to him, with reference to the mode in which he had purchased the boots?

A. Yes, and he would hear nothing from him on the subject.

Q. What did he say to you at that time, with relation to Mrs. Hawes being glad or sorry when he was sick?

A. He said that she could not conceal her joy when he was sick; that he could not have her around him on that account.

Q. What did he say she was wishing for?

A. For his death; for his property; and that she could never have a cent of it.

Q. Did he say anything about his mental condition, and state of health?

A. Yes, sir.

Q. What was that?

A. He said that at times he was not responsible for what he did or said; that he did a great many things that he was sorry for.

Q. Now, he talked a good while on this occasion with respect to Horace. Did he talk in this tune, in relation to Carrie?

A. Yes, sir; he spoke of her.

Q. What did he say about her?

A. He first said that she was a very bright, intelligent child, and a great comfort to him, and he afterwards, in abusing his wife, said the child was not his.

Q. Whom did he say was the father of the child?

A. He said she was the very image of Washington Bartlett.

Q. What was it in her that he saw that resembled the Harbor Commissioner?

A. He did not say. He was walking the floor, very much excited at that time.

Q. What did he say he could see in her that was like Washington Bartlett?

A. He did not say.

Q. Like her father, or what did he say?

A. He said she was the very image of him; that is the expression he used.

Q. What did he say further about Mr. Bartlett?

A. He said he was a vile scoundrel, a man without principle, and not to be trusted in any capacity.

Q. When he was talking about this in this way about Mr. Bartlett, and his wife, and his little child, his daughter, what was his appearance as contrasted with his appearance when talking with you on the subject of religion, and quoting Scripture?

A. When he was quoting Scripture, he was lying on the sofa; and when he was speaking of his wife and children, he was walking the floor.

Q. What was the difference in tone and manner?

A. Then he was very much excited.

Q. On the occasion when he was speaking on the subject of religion, or the children?

A. On the children.

Q. Did he say anything to you about your sister Carrie in relation to his wife?

A. Yes, sir.

Q. What was that?

A. Well, not very much at that time, except that she was a spy.

Q. A spy for whom?

A. For Mrs. Hawes.

Q. Did he ever talk with you at any other time about your sister Carrie?

A. Yes, sir.

Q. When was that?

A. After his return from Europe.

Q. What did he say then?

A. He said that Mrs. Hawes, or that woman, had written Carrie; that he was astonished that a man of my father's honor and discretion would permit such a woman to visit his house and have the care of his young daughters, as she had taught Carrie to peep through key-holes into his room, get his letters and read them, and tell her what was in them.

Q. After he returned from Europe, did Mr. Hawes have any conversation with reference to his wife, and her character and conduct?

A. Yes, sir.

Q. When and what was that?

A. It was in September, 1870.

Q. Where?

A. On Folsom street.

Q. What did he say about her?

A. Well, he said that she had disgraced him in every way in his absence.

Q. Was that his language?

A. Well, as near as I can remember. He told me a great many instances.

Q. What did he tell you?

A. He told me that she had broken into a gentleman's rooms in his absence, and stolen the furniture out, and sold it, and had traveled

around on the cars by herself, as no lady would; that she walked the streets of San Francisco as any common woman, and her associates were of the lowest order.

Q. What did you say in reply to that?

A. Well, I attempted to—he asked me if I did not know it was so, and I told him no; that I did not; that I never heard of those things. He asked me what became of the property that she had stolen from him.

Q. What property did he say she had stolen?

A. Fifteen hundred dollars worth of furniture and some wheat and hay, I believe.

Q. Stolen wheat, and hay, and furniture; anything else?

A. No, sir.

Q. Did he say anything about her having run up debts, incurred debts?

A. He said she ran him in debt eighteen hundred dollars, from the first of April to the first of July.

Q. Did you know anything about that, whether it was true or not?

A. I did not think it was true.

Q. Did you tell him so?

A. Yes, sir.

Q. What did he say?

A. He said that I did not know; that that is why he sent for me to explain these matters to me.

Q. Within what period had she run him in debt eighteen hundred dollars?

A. From the first of April to the first of July.

Q. At the time he was telling you these stories of Mrs. Hawes, your aunt Caroline, and asking you if you did not believe them, or know something about them, did he say anything about his intention to make provision for you?

A. He said that he had intended doing it.

Q. He had intended doing what?

A. Providing for me, and all my family, well; but that her conduct had been such that he could not do it.

Q. He intended to provide for you and your family, but on account of his wife's conduct, he could not do it?

A. Yes, sir.

Q. Did he tell you at this time, anything in relation to his having forbidden his wife to come into his presence?

A. Yes, sir.

Q. What was that?

A. He said that he would not allow her there; that she was too anxious to get clear of him.

Q. Did he call her any names?

A. He always spoke of her as "that woman."

Q. Did he apply any other epithets to her?

A. Thief; liar.

Q. Now, at the time that he told you this yarn of her having run him in debt eighteen hundred dollars, and all the rest, how much time did he occupy in talking about her?

A. That time, about two hours, in September.

Q. Did that continue an uninterrupted strain, a period of that length of time?

- A. It did for an hour; Mrs. Hawes came in while I was there.
- Q. What did he say to her?
- A. Nothing. He did not speak to her.
- Q. Did he look at her?
- A. No, sir. As she came in, he turned his face one side, and made a contemptuous movement of his lips.
- Q. What did she do?
- A. She walked up to him, and kissed him on the side of the face.
- Q. Did she say anything?
- A. She asked him how he was.
- Q. What did he say?
- A. I do not think he replied to her.
- Q. How long did she remain in the room after that welcome?
- A. Well, she was back and forth from that room to the other one, until I left.
- Q. Did he continue this talk all the time?
- A. Yes, sir.
- Q. Did you see him anywhere in the city in the month of October?
- A. Yes, sir.
- Q. Where was that?
- A. On Folsom street.
- Q. How long after this conversation that you have just been detailing, was it?
- A. I think it was about two weeks, probably a little more.
- Q. About two weeks after this you saw him in town?
- A. Yes, sir.
- Q. Where?
- A. On Folsom street.
- Q. At Mr. Hawes' house there?
- A. Yes, sir.
- Q. What time of the day was it?
- A. At half past nine in the morning, when I first went there.
- Q. Who was there when you went?
- A. His nurse.
- Q. Do you remember her name?
- A. No.
- Q. Whereabouts in the house was it?
- A. He was in the parlor.
- Q. What was he doing?
- A. Eating his breakfast.
- Q. Was anybody in while you were there, while he was eating his breakfast?
- A. Yes, sir.
- Q. Whom?
- A. Mrs. Bloomenburg.
- Q. Who are the Bloomenburgs?
- A. I never saw her before that time; but from the conversation, I suppose she rented some property from him.
- Q. Was their conversation about the land?
- A. She told him she had some money, and said she wanted a receipt. She did not wish to stay with him, and then she asked him where his child Horace was. He told her, and she told him it was an outrage to take the child from its mother.
- Q. What did he tell her when she asked him where the boy was?
- A. He said he was in Europe.



Q. And then what did she say?

A. That it was an outrage to separate the mother and child.

Q. What did he say?

A. He said that the mother would never be permitted to see the child, or have him under her care again.

Q. Did he assign any reason?

A. Well, he said she was not a proper person to have him.

Q. I just ask you here, Mrs. Hughes, during the time that Mrs. Hawes was permitted to have her child with her, what were the relations of the mother and child, as to affection and love?

A. The child is of a very affectionate disposition. He was a delicate child, and very fond of his mother.

Q. Well, after that what transpired, after he told her that she could never see her son again, and that she was not a proper person to have him?

A. I do not know what Mrs. Bloomenburg said. She said something that excited him very much, and he said my mother was a woman of discretion, but Horace's mother is not. He made that remark to her.

Q. How did Mrs. Bloomenburg come to go away?

A. Mr. Hawes ordered her away. She told him that she would stay, that if his wife was afraid of him, that she was not. She would tell him what she thought of him.

Q. Did she do it?

A. Yes, sir; they went into the next room and spoke in a loud voice. She said she would not go away until she had told him what she wanted to.

Q. What did she tell him?

MR. PRATT—I object to that as hearsay. What Mrs. Bloomenburg said about Mrs. Hawes, or her opinion about him, has nothing to do with the case.

THE COURT—It is a question as to Mr. Hawes' conduct in a conversation that occurred. It is one of the acts of his life. The jury may consider it in coming to their conclusion as to the question of sanity or insanity. It is not like binding a person to a contract.

MR. PRATT—I don't know that it is really objectionable in that connection.

MR. BARNES—Do you withdraw the objection?

MR. PRATT—Yes, sir.

MR. BARNES—How long did they talk there?

A. I should think it was a half hour.

Q. What was his manner and language towards her in that conversation?

A. It was very violent and excited.

Q. How was it with reference to profanity?

A. I do not remember any oaths that he used to her.

Q. Did he use any to anybody else while talking there?

A. Not that I remember of. He used violent language, and would order her from the room and out of the house. I think he told her that—I am not sure.

Q. After Mrs. Bloomenburg had gone, did anybody else come?

A. Yes, sir.

Q. Who was it, and what did he come about?

A. I did not ask him, but the boy brought in word there was a gentleman wished to see him.

Q. What did he say?

A. Mr. Hawes wanted to know who it was, and the boy went back, and he was a clerk from—I forget the name of the firm. Cook, I think, was one name.

Q. What did he want?

A. Mr. Hawes afterwards told me he came to present a bill for some hay-rope.

Q. And after that was disposed of, did he talk again about Mrs. Hawes?

A. Yes, sir.

Q. What did he say?

A. He then gave me—he said he would give me a full history of her conduct during his absence to Europe.

Q. Well, what did he say?

A. Well, he went on and repeated the same thing; that she had stolen, and lied, and in every way disgraced her family; and that she was continually running to Mr. Bartlett's rooms, forcing herself in there, and that Mr. Bartlett had told her that he was a friend of Mr. Hawes', and could not permit it any longer.

Q. What did he say at this time about her having run him in debt?

A. He told me that she had run him in debt then, and bought a great many things; articles that he knew that she could not wear all of them out, while he was absent.

Q. Did he say anything about the effect of her conduct upon his solvency, or upon his pecuniary condition?

A. Yes, sir.

Q. What did he say about that?

A. Well, he said that she had spent everything that he had?

Q. Did he allude to bankruptcy, in connection with it?

A. Not that I remember of.

Q. Did he say anything about any efforts to find out how long he was going to live?

A. Yes, sir.

Q. What was there about that?

A. He said that she was continually annoying his friends and physicians about their opinion, in regard to how long he would live.

Q. Well, did he say he had got any relief, and if so, in what way?

A. What was your question?

Q. Did he say whether he had been delivered from her persecution on the subject of his health? Did he say anything about Providence, in that case?

A. He said Providence always came to his relief; that he did not believe in any religion, and therefore he was not superstitious.

Q. Did he say anything about Mrs. Harmon, who has testified here to-day?

A. Yes, sir.

Q. What did he call her; what did he say about her?

A. He said that she was a vile tell-tale, and she was one of Mrs. Hawes' associates.

Q. Did he say anything at that time, with respect to Mrs. Hawes' conduct, and dealings with Mr. Bates, and the Rev. Mr. Stebbins?

A. Yes, sir; he said that she had tried to bribe Mr. Bates and Mr. Stebbins, and that she was continually annoying him, going to his

house continually, in regard to what Mr. Hawes intended to do with his property, and how long he would live.

Q. Did he say anything in relation to her visiting your people?

A. Yes, sir.

Q. What was there about that?

A. He said that we ought not to permit it; that she was disgracing us.

Q. At that time, did he speak then, after finishing with the abuse of Mrs. Hawes, did he proceed to anything about himself?

A. Yes, sir.

Q. What did he say?

A. He told me the great good he was going to do; and that he was one of the greatest philanthropists that ever lived; and undertook to explain to me his plan for the University.

Q. What did he say about the opinions that the great men of the day entertained for him?

A. Well, that he was among the greatest. He spoke a great deal in regard to that. I do not remember his language—that he would live forever.

Q. Where were you spending the morning with him riding?

A. At eleven o'clock I got in a cab with him, at his request. He said that he would take me to any part of the city that I wished to go. And I spent from that till two o'clock riding.

Q. Was he talking all of the time?

A. Yes, sir; he was talking all the time.

Q. Now, during that time, from eleven o'clock until two, what was he talking about?

A. He was talking of Mrs. Hawes, his money; that he had not a cent in the world; he had given away everything he had; that he did not know where his next meal was to come from; he did not have a comfortable place to lay his head.

Q. What did he say in the way of comparison between himself and the children in one of those places—houses of refuge out there?

A. He said they were better provided for than he was. He told Mrs. Harmon that he would be perfectly satisfied if he had as good a place as that to rest.

Q. He said he was not as well off as those who were then at the Ladies' Protection Relief Society?

A. Yes, sir.

Q. Was Mrs. Harmon present when he made that remark?

A. Well, he made that remark to me after he got in the carriage, although he said something of the kind—that he wished he had as comfortable a place as that, to her.

Q. How did he come to make that remark, "he did not know where his next meal was to come from?"

A. I kept insisting on leaving him, and he insisted on my remaining with him; that he had no one to care for him, and if he went back out to Folsom street, he would be all alone; he was very feeble, and he was, in fact, nearly starving; that he did not know where his next meal was to come from.

Q. How was your appetite at that time?

A. I was very hungry.

Q. Did you go anywhere and get anything to eat?

A. When we were at Market street, I told him I must get out,

and he inquired why, and I told him that I was so hungry that I could not stand it any longer.

Q. What did he do?

A. He got out, and went with me into Swain's.

Q. Was it there you had the conversation about his want of food?

A. It was just as we stopped there; and then after 'I left, he insisted on my going over to Folsom street, and taking care of him.

Q. When you had had your lunch, and proposed to leave him, did he talk then again about Mrs. Hawes?

A. No, sir.

Q. After that, you went there?

A. No, sir; I left him there.

Q. Now, after that interview, where did you see him again?

A. In December.

Q. Where?

A. At the same place.

Q. The house on Folsom street?

A. Yes, sir.

Q. What was the burden of his conversation at that time?

A. He was in bed, and very weak; and I only remained about an hour that time. I took him some food.

Q. Well, what did he talk about?

A. He was very abusive to his wife.

Q. Was she there?

A. Yes, sir, she was there.

Q. What did he do or say?

A. He would not permit her to speak to him. He would call her "Woman, come here," in a very violent and rough tone of voice, and when she came, he would raise his hand and shake it at her, and tell her not to speak to him, but do as she was ordered.

Q. How would she conduct herself at that time?

A. She never replied to him. She tried to be very gentle with him.

Q. Did he say anything to you at that time about his wife, and his trusting her, or the reverse?

A. Not that day, particularly.

Q. Did he say anything to you, in relation to Mr. Jessup, the dentist?

A. Yes, sir.

Q. What was that?

A. He said that he was in league with his wife like all the scoundrels, to swindle him out of everything he had.

Q. Did he say anything about Mrs. Thurbur and Mrs. Harmon, at that time?

A. I do not remember whether it was at that time he told me, but he had spoken to me about that.

Q. What did he say about that?

A. He said they were very bad characters.

Q. Did he say anything about that, in connection with his wife?

A. Yes, "they were in league with her."

Q. To do what?

A. To spy on his actions.

Q. After this time, did you see him again?

A. Yes, sir.

Q. How long afterwards?

A. The next day.

Q. What occurred then?

A. I sat up with him one night.

Q. Did he talk any?

A. Yes, sir.

Q. What about?

A. About his wife and children.

Q. What did he say about them?

A. Well, the same he had told me before.

Q. He went all over it again?

A. Yes, sir; he went all over it again. He said that he could not trust her to buy the children clothes, and if Carrie wanted a pair of shoes, he had to get them for her.

Q. Was Mrs. Hawes there at this time?

A. Yes, sir.

Q. How did he treat her?

A. Very roughly.

Q. That describes it. What did he say to her?

A. He called her a great many vile names.

Q. I am sorry to press you on so disagreeable a subject, and in this large assemblage; but it is necessary to ask. What did he say to her?

A. He frequently used oaths in addressing her.

Q. How would he speak? I don't want to go through all, but give us an idea of his speaking to her.

A. It was very cross.

Q. What did he say? Tell us one thing; I don't want it all; but just give us one thing, that the jury will understand.

A. Nearly every time that he called for her to do anything for him, he would tell her to go to the devil.

Q. Did he apply any epithets to her? Any names to her?

A. He sometimes used oaths in speaking to "that woman."

Q. How would he use that; what was he saying?

A. I do not remember his exact words, Mr. Barnes, but he never spoke a pleasant word to her.

Q. And was profane?

A. Very profane; and whenever she had to do the cooking on the grate, you know, and occasionally something would be smoked, and that he would blame her for.

Q. Were you and she out of the room together, any time that night?

A. About ten minutes.

Q. When you came back, what did he say to you?

A. He wanted to know what we were talking about.

Q. What did you tell him?

A. He directed the question to her.

Q. What did he say to her?

A. He said he thought it took two women a long time to pick a little chicken.

Q. What did she say?

A. I don't think I recollect.

Q. Did he say anything to you on that subject?

A. No, sir.

Q. Did he complain at all that night to you or to her of her treatment to him?

A. Yes, sir.

Q. What did he say about that?

A. He said that she was trying to conceal her great joy at his approaching death, but that he could see it in all her actions. I told him that she was a devoted wife.

Q. What was his tone, and manner, and appearance that night, when talking to her or speaking of her?

A. When he spoke to her he looked very angry, very much excited, and then he was very weak, and he would sink back exhausted on his pillows and gasp for breath.

Q. Did you ever see him after that?

A. No, sir.

Q. About what time was this last interview?

A. It was, I think, about the eighteenth or nineteenth of December.

Q. Now, from what you saw of Mr. Hawes, and from what was said to you, from his language, demeanor, and appearance, did you or not form any impression or idea at these times or any of them, with reference to his mental condition?

A. Yes, sir.

Q. What was that opinion?

A. I thought he was—

Q. What was that opinion?

A. That he was insane, that is all.

[Here the Court adjourned until to-morrow morning, 10 o'clock.]

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## FIFTH DAY.

SATURDAY, NOVEMBER 18th, 1871.

LIZZIE HUGHES. Recalled for further *cross-examination*, by MR. PRATT.—Q. I believe you expressed the opinion yesterday, that Mr. Hawes was partially insane?

A. Yes, sir.

Q. I wish you would explain to the Court and jury exactly what you mean by insanity.

A. Mr. Hawes told me himself at times, he was not responsible for what he did or said.

Q. Mr. Hawes told you himself, at times, he was not responsible for what he did or said; he did things which he afterwards was sorry for?

A. Yes, sir.

Q. Had you any other reason for supposing him to be insane?

A. Yes, sir.

Q. What other reason?

A. His peculiar actions, contradicting himself.

Q. In what respect did he contradict himself? State the particular instances of these contradictions from which you drew the inference that he was insane.

A. In that conversation, he told me that he would live to see his son twenty-one years of age, to take care of his property, and things like that; and an hour after, that he was in a starving condition, and didn't know where his next meal was to come from.

Q. On what occasion did this conversation take place?

A. In October.

Q. October, 1870?

A. Yes, sir.

Q. On the occasion of this riding with him in the hack, about which you have spoken?

A. Yes, sir.

Q. State what transpired then at that conversation.

A. Well, he told me he was not responsible for his acts, which was in April.

Q. When was that?

A. April previous.

Q. April, 1869?

A. Yes, sir.

Q. Where was that?

A. In Santa Clara.

Q. April, 1869, in Santa Clara. He told you he was not responsible for some acts, and some things he was sorry for?

A. Yes, sir.

Q. Afterwards, in October, 1870, while riding around the city, he told you that he had no property?

A. Yes, sir.

Q. And from these two circumstances, you inferred that he was insane?

A. And other actions; his general deportment.

Q. What was there in his general deportment upon which you base that conclusion?

A. Asserting things without foundation.

Q. What was one of these things he asserted?

A. His wife's character and habits.

Q. What was the language?

A. His denying that Carrie was his child. He told me in the same conversation how much he thought of her, how bright an intellect she had, and the only friend he had.

Q. What was the general result of his observations in regard to the child Carrie; did he seem to be attached to her, fond of her?

A. Very fond of her; very much.

Q. Very much attached to Carrie?

A. Yes, sir.

Q. How was it in regard to his son Horace?

A. He was very fond of the child, but never showed the same love for him as for Carrie. Carrie he never punished or scolded in my presence.

Q. Then he was fond of both; but more particularly of Carrie?

A. Yes, sir.

Q. Were there any other circumstances or facts than these you have stated now, from which you infer his insanity?

A. Yes, sir.

Q. What else?

A. His abuse of those he at times claimed to be his best friends.



Q. What was it—an indiscriminate abuse of different persons?

A. Well, he mentioned some in particular.

Q. How many did he mention?

A. I mentioned the names yesterday of several.

Q. Did you mention all of whom you have any knowledge of his abusing?

A. No, sir; I did not.

Q. Give us the balance of them now.

A. Well, he abused all those that Mrs. Hawes had any dealings with.

Q. All that Mrs. Hawes had any dealings with?

A. Yes, sir; and some of those that he employed himself.

Q. How many of those that Mr. Hawes employed, himself?

A. A number. He mentioned Mr. Livingston to me, and Mr. Bartlett.

Q. Was not this the fact, Mrs. Hughes, that at the times he talked very roughly and very abusively about all persons who happened under any circumstances to run counter to his wishes and his ideas—wasn't that the general result?

A. What was the question?

Q. Didn't he abuse everybody at times who happened to run counter to his ideas and notions?

A. Yes, sir.

Q. It was the general result of the character of the man, and it was from that, in connection with what you have stated, that you concluded he was insane?

MR. BARNES—That is not what she said, at all.

MR. PRATT—I ask her if that is what she said. I believe the witness is competent to answer the question. I ask you if it was not from that circumstance, of his abuse of all who resisted or opposed him, and the other facts together?

A. No, sir; his actions generally taken in connection with that abuse.

Q. Let us understand what these actions were besides the abuse?

A. Violence; the vehemence in conversations; the expression of his eyes.

Q. The violence or vehemence in conversation, and expression of his eyes—were not these conversations when he was violent and vehement, in regard to those persons of whom you spoke?

A. In regard to his wife it was always violent; in regard to other people, not so much.

Q. Did you ever hear him say anything complimentary or favorable of his wife at all, on any occasion?

A. Do you mean the last years of his life?

Q. I mean at any time.

A. Yes, sir; when they were first married I knew of no difficulty.

Q. Now state about what time you first heard him speak offensively or unkindly of his wife?

A. It was in November, 1868.

Q. November, 1868?

A. The first I ever heard of.

Q. Had not you been frequently with him prior to that time, through a series of years?

A. Yes, sir; I knew he was always unkind to her, but he never spoke to me in regard to the matter before then.

Q. Had you ever been, prior to that time, a member of his family, or lived in his house?

A. I have been there a month at a time.

Q. How often did that occur?

A. I do not know—two or three times a year.

Q. How often?

A. I should think as much as two or three times a year; I won't be sure.

Q. Then two or three times a year, for a month or so at a time, you were at his house?

A. Yes, sir.

Q. About how many years did that continue?

A. For three years.

Q. Three years prior to 1868?

A. From the time he was married until I married.

Q. When was he married?

A. He was married in 1858.

Q. When were you married?

A. November, 1861.

Q. November, 1861. During that interval, then, from his marriage up to yours was the period of three years to which you refer?

A. Yes, sir.

Q. Then, from 1861 down to 1868, when you first heard him speak unkindly of his wife, what were your relations with him?

A. I was on intimate friendship with him.

Q. Frequently at his house?

A. Yes, sir.

Q. Was he frequently at your house, also?

A. When we resided in San Francisco, he called on us often.

Q. How often? Once a week; once a month; about how often?

A. He would be there, I suppose, sometimes twice a week, and then again, not be there for a month.

Q. During all this intimate intercourse between yourself and Mr. Hawes, you never heard him speak unkindly of his wife until November, 1868?

A. I have heard him speak unkindly to her, but never to me about her.

Q. Now, you say you heard him speak unkindly to her. State what he said, which you call speaking unkindly to her. Let us see the character of the unkindness. We want the jury to understand what you mean by speaking unkindly. State the facts and circumstances there.

A. He complained of her household affairs, refused to give her money to buy butter or meat.

Q. What reason would he assign on those occasions, for refusing to give her money?

A. I have heard him tell her he did not have a dollar in the world.

Q. Did he ever assign any other reason for it?

A. Not that I heard.

Q. Did he, in the same connection on those occasions, accuse her of being extravagant in her household arrangements?

A. He said he did not care for money; that it would be more benefit in the bottom of the ocean, than to give it to her.

Q. Those are the only reasons you have heard him assign for refusing to give her money?

A. Yes, sir.

Q. Did you ever, on any of these occasions, hear him also say that plenty of money had been provided and furnished for these purposes?

A. Not at that time.

Q. Now, Mrs. Hughes, answer if you can, the question I first asked you, what do you mean when you use the term insane. Do you mean to say that the man was entirely bereft of reason, that he had no capacity to transact business, or to take care of himself?

A. I thought he was capable of transacting his business, as far as dollars and cents were concerned.

Q. So far as your observation extended, he always would manage his own financial affairs with a great deal of accuracy (?)

A. Yes, sir—refused to pay bills that were presented to him.

Q. He scrutinized all of his wife's transactions in detail, and with great care, didn't he?

A. Yes, sir.

Q. Did that continue up to the time you saw him last?

A. Well, in October he refused to pay a bill.

Q. You made a remark just now, that he refused to pay bills. When did that first come under your observation?

A. In April, 1861.

Q. Do you recollect what that bill was, and who presented it?

A. The lady that he was boarding with.

Q. Where was that?

A. At the corner of Jessie and Second streets.

Q. Do you know what the bill was for?

A. For boarding.

Q. What reason did he assign for refusing to pay it?

A. Too large; a swindle.

Q. Did you ever hear him refuse to pay any other bill?

A. I have heard him refuse to pay a servant.

Q. What reason did he assign for that refusal?

A. That they had not done their duty.

Q. Did you ever hear him refuse to pay any other bill?

A. I have heard him say that he would not pay bills, unless they had an order from him to make them.

Q. He would pay no bills unless they had an order from him to make them—those bills?

A. Yes, sir.

Q. Exactly. You have not answered my question yet, Mrs. Hughes, what you mean by pronouncing him insane?

A. I never made insanity a study.

Q. Have you ever been in contact with insane people very much?

A. No, sir.

Q. Have you ever had anything to do with insane people at all?

A. I have twice met insane persons before.

Q. When you spoke of Mr. Hawes, as being in your opinion insane, you used that word insane in the sense in which it is commonly used among people in ordinary conversation, as other people used the term, ordinarily, do you?

A. I thought at times that he was insane.

Q. That is not answering the question. You have told me that repeatedly. Now, I want to know what you mean, in what sense you use the term insane. Do you use it as people ordinarily use it in conversation.

MR. BATES—I object to that question.

MR. PRATT—What is the objection?

MR. BATES—There is no foundation laid that she has any knowledge of what people do mean when they use the word insane.

MR. PRATT—Have you a general idea of what people mean when they say a man is insane?

A. That they are not right in their mind.

Q. Now, don't you use that term indiscriminately, to designate a particular degree of meanness, sometimes. Isn't that all you mean when you say Mr. Hawes was insane. Don't you mean simply to convey the idea that he was a very mean man, so far as his family is concerned?

A. No, I mean as far as my opinion goes, he was insane at times; so far as my knowledge goes.

Q. What do you mean then by insane? That is what we are trying to get at. Do you mean that his mental or intellectual powers were destroyed, paralyzed, that he no longer had the use of his faculties?

A. No, sir.

Q. Didn't you think, on the contrary, that Mr. Hawes had his comprehensive and reasoning powers in a remarkable degree, up to the time of your last interview with him?

A. Well, he would imagine things and reason them out, and try to prove to me that they were so.

Q. You never felt any compunctions, whatever, about being alone with him, or about riding out with him, or gratifying his wishes in any respect, did you?

A. Yes, I did. In the carriage, I was very anxious to leave him; his deportment was so wild, that I did not care to stay with him.

Q. I believe you told us yesterday, that you got so hungry, that you were obliged to leave him?

A. Before that, sir—yes; before that, I asked him several times to let me out.

Q. What reason did he have for refusing?

A. He wanted to prove to me that the things he stated were true, in regard to his wife's character.

Q. Did he show any degree of violence towards you, personally?

A. Yes, sir.

Q. You simply wanted to get out of the carriage, then, because his conversation was very disagreeable to you—is that all?

A. Yes, sir.

Q. Not because you had any fear of his insanity?

A. I thought he was scarcely conscious of what he was saying.

Q. Did he talk about anything else during that ride except his wife and financial affairs?

A. Yes; he told me something of his plans for a university, and charity.

Q. Did he seem to know then what he was talking about—to understand himself? Let me ask you, then, again, Mrs. Hughes, don't you think any man who was worth half a million dollars, has a wife

who always treated him kindly, and would make a will disinheriting her, must necessarily be insane on that subject?

MR. BARNES—I object to that question.

MR. PRATT—It is proper for the purpose, your Honor, of ascertaining what her ideas of insanity are. She pronounces a man insane; I want to know the reason upon which her opinion is based.

MR. BARNES—I suppose the counsel has a right to probe the recollection of the witness in respect to the facts that she has testified to, and so far as her opinion is based upon those facts; but I do not think he has any right to put to her questions of that nature, that have no relation to her testimony, and are not calculated in any sense to throw any light upon this controversy; nor can you put a hypothetical case to any witness, unless they are experts, and introduced as such. Here is a witness from the ordinary walks of life, who has stated to the jury a certain state of facts; then she is asked upon those facts what her opinion is, if she has any, and she gives it for what it is worth, that is all. The question is allowed to be put, and it is allowed to go in evidence; but the jury are not, of course, bound by the opinion; they are the judges of whether, upon the facts stated, there is any foundation for it; and they will determine whether the state of facts as she has stated would warrant anybody in concluding that Mr. Hawes was not in his right mind. He can examine the witness upon some specific subject, or set of subjects, but the counsel cannot sit here and spear at an unskilled witness, and one that is not produced as an expert with hypothetical cases.

THE COURT—I am inclined to sustain you in the position. It is very difficult to draw the line of how far a question of this sort may be asked. As I have stated before, in deciding a similar proposition, the question is now put as follows: “Did you form any opinion with regard to the state of mind of the deceased, from what you saw of him?” There cannot be any objection to that. Then the answer comes in the affirmative, “Yes.” “What do you think of it?” The reply is, “Insane.” What the books have laid down is that you can ask the question as far as “From what you saw, and from what you know, of the witness, the facts to which you have testified, should you think there was any indication of insanity?” I don’t see much distinction between the way the question was finally put in the authorities and the question as it has been put in the progress of this trial. There was no place in which I could direct the questions to be put that way, but I have repeated the way in which they have been put in these cases. There is great conflict as to whether an ordinary witness can give his opinion upon a question of insanity. I hold that the authorities entitled to the greater consideration expressing, at least, my ideas of the question, have held that they could, if they could give the facts upon which that opinion is based; and if they have given their opinion upon the facts, it is of the highest consequence that every facility shall be allowed to show that they understand the character of the deceased.

MR. BARNES—That we don’t object to, at all. The question put, was this: “Is it your opinion that a man who is worth a million dollars, and makes a will disinheriting his wife, is insane.”

THE COURT—That is the question. The witness has been asked a great many questions to define what she understands by insanity. She has replied to the last of these questions finally that she thought, at times, he was insane. She was then asked other questions, which,

perhaps, would not have been proper, except in a cross-examination; and now, as a final question, the counsel asks her if a man, under the circumstances she narrates, would, in her opinion, be an insane man.

MR. BARNES—That is not the question; but he simply puts the question to her: “Now, suppose a man that is worth a million dollars makes a will disinheriting his wife—do you say he is insane, on that account?” The witness has not testified to such facts, nor to facts of that nature, nor has she undertaken to pass an opinion on that; but it has been solely upon the facts she has stated here, and it has no relation to the proposition. I do not think it is a proper question.

THE COURT—I will give you the benefit of an exception.

MR. BARNES—I don't want any exception.

MR. PRATT—Be kind enough, Mrs. Hughes, to answer that question.

A. What was the question?

Q. Suppose a man was worth a million, or a half million, dollars. He has a wife that has for a series of years treated him with the utmost kindness and gentleness, and makes a will by which he disinherits that wife entirely, would not you pronounce that man insane upon that subject?

A. I would not, unless I knew the circumstances.

Q. Suppose these were all the circumstances; that is, the case I present; the simple fact that he is worth a half million, or a million dollars, his wife has always treated him with the utmost kindness during a series of years, and he then makes a will by which he leaves her entirely penniless, wouldn't you think the man who would do that, insane upon that particular subject?

A. If he had always been kind to his wife, and treated her with great kindness, I would not think he was insane.

Q. I don't know as I understand your answer.

A. If he had always treated his wife with the greatest kindness, otherwise than that, I would think he was insane.

Q. Well, then, let us take that view of the proposition. Suppose he is worth a half million dollars, and his wife has always treated him with the utmost kindness, and that he, during a series of years, has been unkind to her, and disinherits her by his will, you would then consider him insane on that subject.

A. If he acted as Mr. Hawes did, I think I would.

Q. That is not answering the question exactly, Mrs. Hughes. I want an answer, if you can give it, to the precise question which I put. If you cannot answer, say so, and I will pass on to something else.

A. I never made those subjects my study, and, therefore, I am not prepared to discuss them.

Q. Now, let me ask you once more, when you say Mr. Hawes was insane, do you use that word in the sense in which it is ordinarily used among people; or, I will ask you this question first. Have you any knowledge of the particular and peculiar meaning of the word insane, in law?

A. No, sir.

Q. Then you use the word insane, do you not—in the common sense in which it is ordinarily used among people, who are not lawyers or judges?

A. I suppose that I do.

Q. In its general sense?

A. Well, when a man acts as he did, I don't mean insane from



temper; persons become insane, sometimes, from violence of temper, but not in this respect. I think his mind was deranged.

Q. You use the terms deranged and insane in their general signification as other people do, do you?

A. I do not know how other people use them; I only have my own ideas.

Q. Let me ask you, if you use the word in any specific, legal, or technical sense, or do you use it here as you would anywhere else, in conversation on the street, and in the drawing room?

A. No, sir.

Q. You do not?

A. In speaking of Mr. Hawes, I do.

Q. Yes. That is exactly what I want to get at. That is an answer to the question. You spoke yesterday of a conversation which took place in April, 1869; that I believe you said was at your father's house, did you not?

A. Yes, sir.

Q. Did you say that in that conversation, in April, 1869, Mr. Hawes said that his wife was teaching his son to lie and steal?

A. Yes, sir.

Q. Are you still certain that it was in that conversation that he made those remarks?

A. I am.

Q. You spoke yesterday of another conversation; the next one, I believe, took place in October, 1870.

A. The next one was in September, was it not?

Q. September, 1870?

A. Yes, sir.

Q. Where did you reside in September, 1870?

A. Near Haywards, Alameda county.

Q. Where did this conversation take place?

A. 1,314 Folsom street.

Q. In this city?

A. Yes, sir.

Q. What was the occasion of your going to Mr. Hawes' at that time?

A. I received word that he wished to see me.

Q. How did you receive that word?

A. My brother-in-law told me.

Q. What is his name?

A. Leslie E. Hughes.

Q. Was your husband residing at Haywards at that time?

A. Yes, sir.

Q. Did you or your husband receive, about that time, any letter from Mr. Hawes?

A. No, sir.

Q. Did you or your husband, about that time, receive a letter from Mr. Washington Bartlett?

A. No, sir.

Q. You came to his place on Folsom street, at that time, merely at the request of your brother-in-law, did you?

A. He told me that my mother had received a letter from Mrs. Hawes stating that Mr. Hawes wanted to know where I was, and wanted to see me.

Q. That was all, was it?



A. Yes, sir.

Q. Have you ever had any conversation with Mrs. Hawes since the death of Mr. Hawes, or before, with reference to a certain mortgage that Mr. Hawes held against your husband?

A. Yes, sir; the subject has been mentioned. My husband usually attends to his business; I know nothing about it.

Q. When was the subject first discussed between you and Mrs. Hawes?

A. I cannot name the time.

Q. Was it prior to your coming over to see Mrs. Hawes in September?

A. Not until after Mr. Hawes' death.

Q. What was that conversation between you and Mrs. Hawes?

A. I do not remember any particular conversation we have ever had on the subject. It has been mentioned, I suppose, between us.

Q. You don't recollect what the conversation was?

A. The subject has been mentioned.

Q. Now, Mrs. Hughes, you recollected yesterday, with the utmost accuracy and detail, everything that Horace Hawes had ever said to you during a long series of years; detailed his conversation, his appearance, the expression of his countenance, and the manner in which he used his hands, with the utmost particularity and minutiae. It is a little remarkable that a conversation that has taken place between you and Mrs. Hawes, during the last few interviews, you cannot recollect its purport.

A. No general conversation had taken place between us that I remember about. The subject has undoubtedly been mentioned, but no particulars entered into.

Q. The matter has merely been mentioned, then, between you and Mrs. Hawes?

A. As far as I am concerned; that is all.

Q. How did it happen to be mentioned, or introduced?

A. That I cannot say.

Q. You do not even remember that?

A. We had together a great deal of conversation on a great many different subjects. I did not try to remember them.

Q. Can you assign any particular reason why you recollected so particularly everything Mr. Hawes said to you for the last fifteen years, and cannot recollect what Mrs. Hawes said a few months ago?

A. I did not say that I recollected everything that Mr. Hawes said.

Q. No; but you detailed pretty much everything you were questioned about with a great deal of particularity. What I ask you now is to have you explain to the jury, if you can, why your memory is so distinct and precise in regard to his conversation, and so perfectly oblivious of conversations with Mrs. Hawes?

A. These conversations with Mr. Hawes were so peculiar that they made an impression on my mind.

Q. Now, was not the matter of the mortgage covering your husband's estate of about as much importance to you as the conversation between you and Mrs. Hawes?

A. Yes, sir.

Q. Didn't you take any interest whatever in that conversation?

A. I do not remember anything about it. I remember one thing. Mrs. Hawes asked me if Mr. Bartlett had ever written to us on the subject.

- Q. Yes. What further was said at that time with reference to it?
- A. I do not remember what was said; I did not have any idea.
- Q. What reply did you make to that question?
- A. I said he had written last February; I believe it was.
- Q. Last February he wrote to you on that subject?
- A. The last of January or February.
- Q. Now let me ask you if you ever had any interview with Mr. Hawes after you received the letter from Mr. Bartlett?
- A. No, sir.
- Q. Never saw him afterwards?
- A. No, sir; I never saw him afterwards.
- Q. Didn't you receive a letter, or your husband, from Mr. Bartlett on this subject as early as October, 1870?
- A. We knew nothing of Mr. Bartlett's trust until we received his letter in January or February.
- Q. January or February last; 1871?
- A. Yes, sir.
- Q. On this occasion of your interview with Mr. Hawes in September, did you see Mr. Bartlett there?
- A. No, sir.
- Q. You paid a long visit to Mr. Hawes, in October, did you not?
- A. Yes, sir.
- Q. Did you see Mr. Bartlett there?
- A. No, sir.
- Q. Was any reference had then to Mr. Bartlett or to a letter from him?
- A. Nothing at all, excepting that Mr. Bartlett had said Mrs. Hawes was intruding herself into his rooms, and that Mr. Bartlett had forbidden her to do so any more.
- Q. Horace Hawes said that to you?
- A. Yes, sir; Mr. Hawes told me that.
- Q. Did you ever have any conversation with Mr. Bartlett, in regard to the matter?
- A. I came over from San Francisco about the first of February.
- MR. BATES—That is about another matter, and has nothing to do with this.
- MR. PRATT—I suppose the Court will see, if counsel does not, our purpose. It is simply to show this witness is an interested party. I apprehend that if I show that Mr. Hawes held a mortgage that covered the entire estate of this witness' husband, which, if foreclosed, would render him insolvent, and then, if I succeed in showing, as perhaps I may, or may not, that Mrs. Hawes or some one, has undertaken to forgive that mortgage, if this will can be broken, and the property pass to her, that it might, perhaps, affect the standing of this witness before the jury. The gentleman is so exceedingly anxious to know what is the purpose of this testimony, that I present it to you.
- MR. BATES—If you can show that, I have no objection.
- MR. PRATT.—When did your first conversation on this subject with Mr. Bartlett take place?
- A. I never had any conversation with Mr. Bartlett on the subject, except that my husband had replied to Mr. Bartlett's letter, and handed it to me to put in the post-office here in San Francisco. I forgot the letter. It was misplaced, and I thought proper to state to Mr. Bartlett that my husband had replied to his letter, and that I had neglected to mail it.

Q. That was all the interview you had ?

A. That was all the interview I had, except to inquire how Mr. Hawes was.

Q. Do you recollect when that occurred ?

A. I think the first of February; I may be mistaken a few days.

Q. Here in this city ?

A. Yes, sir, at the Harbor Commissioner's office.

Q. Are you sure, Mrs. Hughes, that that conversation was not on your former visit in October ?

A. I am quite sure of it.

Q. Are you as sure of that as anything you have testified to in this case ?

A. I certainly am.

Q. Can you now, Mrs. Hughes, tell me who first introduced the conversation, in regard to this mortgage, between you and Mr. Hawes ?

A. I said that Mrs. Hawes had asked if we had heard anything from Mr. Bartlett on the subject. I remember she asked me that; I think it was about the 5th July.

Q. Did Mrs. Hawes ever state to you what was the intention of her husband, during his lifetime, in regard to that mortgage or the collection of that debt ?

A. No, Mrs. Hawes knew nothing of the transaction.

Q. What ?

A. Mr. Hawes never explained his business matters to her.

Q. Mrs. Hughes, when did you first know of the existence of this mortgage or claim against your husband ?

A. At the time.

Q. At the time it was made ?

A. Yes, sir.

Q. Was there then any agreement or understanding as to whether that mortgage should ever be paid or not ?

MR. BARNES—Between whom ?

MR. PRATT—Between Mr. Hawes and yourself.

MR. BARNES—I object. The mortgage speaks for itself and the law is that it should be paid. It is immaterial and irrelevant also, the parties are not resisting payment of the mortgage. I am perfectly willing that counsel should show, if he can, according to his statement here, that there was a mortgage, and that Mrs. Hawes has promised this witness that if she gains the case, she will not demand the payment of the mortgage—if he can, and then we will see, but as to going into conversations with Mr. Hawes about that mortgage, or agreement with her, that it seems to me, is immaterial.

THE COURT—The question is withdrawn.

MR. PRATT—I believe you said yesterday you were acquainted with Mr. Hawes some two years prior to his marriage ?

A. I became acquainted with him in 1855.

Q. In 1855. He was married in 1858 ?

A. Yes, sir.

Q. During these three years, from 1855 to 1858, where was Mrs. Hawes residing ?

A. With my father.

Q. At what place ?

A. In Santa Clara.

Q. Did Mr. Hawes visit her there frequently ?

A. The six months previous to his marriage he was there.

- Q. Often ?
- A. Sometimes he would be there a week at a time.
- Q. How often was he there during these six weeks ?
- A. I don't know. I was at school most of the time excepting the last two months previous to their marriage.
- Q. Well, it was only during these six months then, that he was a visitor at your father's house ?
- A. No, sir, he had been there in 1855.
- Q. How often was he there from 1855, I mean to the beginning of the six months you spoke of ?
- A. I cannot say.
- Q. Was he there more than once ?
- A. I remember distinctly of his being there twice.
- Q. During these six months then immediately preceeding his marriage he was there frequently ?
- A. He was, the last two months; that I know myself.
- Q. Was there anything said, to your knowledge, during that six months in regard to Mr. Hawes' property, any disposition he intended to make of it, or any settlement to be made upon his wife ?
- A. No, sir.
- Q. The matter of property was not mentioned at all, to your knowledge, during that time ?
- A. I do not remember of anything.
- Q. State then to the jury when the matter of Mr. Hawes' property and his disposition of it was first discussed, to your knowledge ?
- A. Who with ?
- Q. Mr. Hawes—or with any one ?
- A. Mr. Hawes told me in May, 1869, that he would not leave his wife any property. That is the first conversation I ever remember of having with anybody on the subject. Mrs. Hawes I don't think I ever had any conversation with.
- Q. You don't think Mrs. Hawes and yourself ever had any conversation about it ?
- A. Not that I remember of. I knew how he treated her, and she told me that he had threatened to leave her without a cent.
- Q. When did Mr. Hawes first speak to you of his intention to found a public charity or educational institution ?
- A. In September.
- Q. What year—1870 ?
- A. Yes, sir.
- Q. Was that the first time you ever had heard of that project ?
- A. I had heard him—he told me once that he intended to build a residence on Eagle Hill, which would last a thousand years.
- Q. A residence that would last a thousand years; was that with reference to the University ?
- A. Oh, he told me of the grandeur of the thing.
- Q. In regard to that, I mean.
- A. That is all I can remember of, now.
- Q. You never knew of his intention to found any public charity or institution until September, 1870 ?
- A. Not from him.
- Q. Did you ever hear it from any one else ?
- A. Yes, sir.
- Q. How early ?

A. I suppose, two or three years previous to his death, as well as I can remember now.

MR. SAWYER—Q. You state that in this conversation with Mr. Hawes, where you judge he was insane, that judging from his action, his vehement conversation, and the expression of his eye—was there anything peculiar in the expression of his eye at this time?

A. I would occasionally notice a glitter in his eye, a cold expression.

Q. Any difference from the expression a man that is angry generally has in his eye?

A. Yes, sir; sometimes it would seem to have a keen, shrewd look about it, and expression.

Q. Did you ever notice it at any other times except on these occasions?

A. No, sir; except when he would be quizzing me in regard to his wife's conduct.

MR. PRATT—Q. Mr. Hawes was a keen, shrewd man, wasn't he, Mrs. Hughes, ordinarily?

A. Yes, sir.

Q. Naturally his eyes would have a keen and shrewd expression; I suppose.

MR. BARNES—A. Yes, sir.

HENRY H. ELLIS, called for Contestant. Sworn.

*Examined* by MR. BARNES—Q. How long have you resided in San Francisco?

A. Since June, 1849.

Q. What has been your business for the last ten years?

A. Police officer.

Q. In what branch of the Police Department have you been more particularly associated during the last five years?

A. The detective branch of it.

Q. Did you hear Mr. Byrne's testimony yesterday?

A. I did not, sir; I read some of it.

Q. Are you the person referred to there as Officer Ellis?

A. Yes, sir.

Q. Following that interview with Mr. Hawes, of which he speaks, did you see Mr. Hawes?

A. I did, sir.

Q. Let me ask you, preliminary to that had you known him before?

A. I had known him by sight for many years; I had never spoken to him.

Q. Did you see him?

A. I did, sir.

Q. Where?

A. I saw him first at his house, on Folsom street.

Q. Did you have a letter of introduction from Mr. Byrne?

A. Something that answered that purpose, yes, sir.

Q. That is, to make it known to Mr. Hawes that you were the person that he had desired to call?

A. Yes, sir.

Q. State to the jury what occurred during that interview.

A. Well, he went on to tell me what he wanted me to do.

Q. What did he say he wanted you to do? When was that—at what time? The counsel wishes to know.

A. In September, 1870; about the middle, I think.

Q. I wish you would give us now, as nearly as you can— When did you go to his house—what time of day or night was it?

A. In the afternoon, sir.

Q. Who let you in?

A. I think there was a young lad there.

Q. In what part of the house?

A. A little "L" on the west side of the house.

Q. What he called his office?

A. Yes, sir; laboratory.

Q. Was he there when you went in?

A. No, sir; in the inner room.

Q. Did he go out to see you?

A. No; I was taken into his room.

Q. Sitting-room or bed-room?

A. Both.

Q. What was he doing when you went in?

A. He was reading some papers.

Q. Now, go on and state what he said to you, and you to him, as near as you can give it, during that interview.

A. He made known his business to me, and what he desired me to do for him; and he told me a long story about his trip to Europe and the East, about Mr. Evans and about his boy, and what he had done and contemplated doing for him; and from that he came down to the trouble between him and his wife.

Q. Now what did he say?

A. He said that during his absence he had been robbed and plundered of many thousands of dollars through the connivance of his wife and her agents, both here in the city and down at San Mateo and Redwood City. That was one of the things that he wanted to unravel. He wanted to know how and when and where this property had gone to, and who had derived benefits from it.

Q. Did he tell you what the property was?

A. Yes, sir; he said there were some heir looms of his and some pieces of furniture that he set great store to, that had been a very long time with him; that the building had been broken open and these things taken away and sold or disposed of. His grain and the products of his farm in San Mateo County had also been wasted, or sold, and squandered—the proceeds. That was one of the subjects that he talked upon, and went on at great length to give me a great many details; I cannot now remember about them. And then there were some other things, and anonymous notes that he had received, that he wanted to know something about, and some squibs in the newspapers. But the main point, and the gist of the whole matter was, he wanted to fasten something upon his wife of her infidelities to him.

Q. Now, particularly about that?

A. He stated that all these things were done for the purpose—not because she was under any necessity of obtaining money in that way, but it was a course, a system, that had been adopted by Mrs. Hawes and her advisers and confederates outside to annoy him; and then he went into details about his suspicions concerning his wife.

Q. What did he say about that?

A. He said he had believed for a long time that she had been unfaithful to him, and that there were various persons that she was in the

habit of seeing and meeting with that were improper persons and had improper relations with her.

Q. Whom did he mention ?

A. Mr. Fitzgerald as one of the parties.

Q. What Fitzgerald ?

A. The Reverend Mr. Fitzgerald.

Q. The Superintendent of Public Instruction ?

A. Yes, sir.

Q. Anybody else ?

A. He did name other people, but I don't remember who they were now; I don't recollect the names.

Q. Did he seem to be sincere in his behalf on that subject ?

A. Yes, sir; he appeared so, and was very energetic, too, or rigorous in his expressions about the matter.

Q. Did he say where this intercourse with Mr. Fitzgerald was carried on ?

A. No, sir, he did not.

Q. Did he tell you where he got his information respecting that, or give you any clue ?

A. He said something about—he spoke of the family connections of Mrs. Hawes.

Q. Which of them ?

A. I think it was the doctor.

Q. Doctor Caldwell ?

A. The ladies of the family—

Q. What did he say about them ?

A. That they were too intimate, and had too much to do with each other.

Q. His wife had too much to do with Dr. Caldwell's family ?

A. Yes, sir.

Q. How many people—if you do not remember the names—how many men did he mention as having sustained these illicit relations with Mrs. Hawes ?

A. I think he didn't mention but one other name besides the name I have mentioned already; I think not.

Q. Can't you remember that name ?

A. No, I cannot; it was some person I know that was known to me at the time, but subsequent developments caused me not to pay much attention to it.

Q. How long did he talk to you about his wife's improper conduct in respect to virtue ?

A. I suppose the whole conversation at that time, this interview was perhaps a couple of hours or more—two or two and a half hours. He touched on all kinds of things.

Q. You say his manner—what was his manner when speaking about her ?

A. He was very excited.

Q. Well, did it appear like excitement of regret or passion ?

A. Well, it was passion with him.

Q. How was his language in speaking of her with respect to its being profane or otherwise ?

A. He did not use a great deal of profanity, never in my hearing; he used to use a few words mildly.

Q. I once heard a man testify in Court that a man was not drunk



as long as he could walk up stairs. I don't know what you mean by mild swearing. Give us an idea?

A. He would utter the word damn.

Q. With respect to her?

A. Yes, sir.

Q. Did he call her any names?

A. Yes, with respect to her and some of her friends.

Q. What sort of epithets did he apply to her, if any?

A. Well, that she was utterly without—she was beyond belief; he could not believe her, and that she was perfectly demoralized by these outside influences—people that were in with her.

Q. Now, as to his epithets, with respect to her, were they mild or strong?

A. He did not use any epithets about her, except he might have used the word damn, and such expressions as that, occasionally; but I didn't attempt to cross him. I never did attempt to after that.

Q. What instruction did he give you, if any?

A. He gave me instructions to find out about these communications in the newspapers, and ascertain what became of his property, and who had stolen it, and about the doings of his wife, and find out if anybody was after him for the purpose of taking his life. That was another sore subject.

Q. What did you do following that—anything?

A. I saw him two or three times before he got through. He requested me to call on him after the first interview, every day or two, which I did do; and, in the meantime, Mrs. Hawes was down in the country; so he informed me at the time referred to. At these interviews with him—I had ascertained enough outside to satisfy my mind about the whole matter.

Q. What did you ascertain; what conclusion did you come to?

A. That the man was a little wild-headed upon these particular subjects.

Q. Did you find upon investigation, that there was the slightest foundation for these charges?

A. None, whatever.

Q. Did you tell him so?

A. I did so. I suggested to him before I done anything at all, that he might be mistaken; had his mind poisoned by somebody. He said "No," and "that I was a good deal like other people," and "that I could not see everything—like all the rest of his friends."

Q. Well, when you finally told him—I understand you to say you did tell him there was no foundation at all, for his charges. How did he receive the information?

A. He was violent.

Q. Well, what did he say?

A. He abused me a little.

Q. What did he say?

A. He said I was like most other people who came to talk to him. They were very short sighted, and could not see anything. That was plain enough to him.

Q. When you told him that, did his manner and demeanor towards you undergo any change?

A. Yes, sir. He became rather savage, and turned on me, and talked very strongly to me in that way. I could see he did not like to have me speak in that way, and I never did afterwards.

Q. What was his tone of voice ?

A. Sharp—shrill. He had a sharp way of talking.

Q. Loud ?

A. Yes, sir. When he was excited, it would be raised more than an ordinary key.

Q. When was the last interview you had with him ?

A. I think it was in December; I won't be sure about that.

Q. 1870 ?

A. Yes, sir.

Q. Where ?

A. In his carriage on California street, at the corner of Leidesdorff.

Q. What transpired ?

A. Well, he told me that he wanted me to come and see him when he got able. He had a great many things to tell me, and he wanted to confide in me, and tell me some things that I did not know; to come and see him; but he was to send a message when to come, but he never did.

Q. That was the last you ever saw of him ?

A. Yes, sir.

*Cross-Examination by MR. PRATT*—Q. You considered yourself then, in a measure, in his employ, from the time you first went there until in December. That was the last interview, on California street, was it ?

A. That was the last interview; yes, sir. I think it was December.

Q. During the time, you had taken some steps I suppose, to investigate these various matters ?

A. Yes, sir; some of them.

Q. I believe you said you went there in September, first ?

A. Yes, sir; in September.

Q. That was your first personal acquaintance with Mr. Hawes ?

A. Yes, sir.

Q. You have not much knowledge then of the man's temper and disposition ?

A. Only by reputation and hearsay.

Q. Well, from his general reputation, you believed him to be a vindictive and ill-tempered man generally ?

A. Yes, sir.

Q. A man who was always violent when his wishes were opposed by anybody ?

A. I understood him to be a very stubborn, malicious man, who had his own opinions, and would stand to them right or wrong.

Q. At this time also, he was in feeble health, was he not; suffering from disease for some time ?

A. Yes, sir.

Q. Originally nervous and violent ?

MR. BARNES—Wait a moment. I cannot tell from this examination, whether the counsel or the witness is testifying.

MR. PRATT—We are cross-examining our witness, if the Court please.

MR. BARNES—Well then, ask him proper questions; I object to them—they are not allowed in a cross-examination.

MR. PRATT—This is the first time I ever heard a question in cross-examination objected to because it was leading.

MR. BARNES—I do not object to it because it is leading, but because it is the whole thing.

MR. PRATT—Q. When he asked you to investigate this matter, in regard to these anonymous communications and squibs in the newspapers, did he show you any of them?

A. Yes, sir.

Q. What was the general purport of these communications and squibs?

A. They were abusive of him.

Q. Of him?

A. Of him; yes, sir; about his treatment of his wife.

Q. That was the general character of all of it, was it?

A. Yes, sir.

Q. Were there many of them; did he show you more than one?

A. Yes, I think more than one; two or three I think.

Q. When he told you he had been robbed and plundered during his absence, by his wife and her confederates, did he assign any reason for that belief; did he tell you the particulars—where and how?

A. Yes, sir.

Q. What was it?

A. He stated that he thought it was a part of a plan to annoy him, a general system of annoyance, that had been attempted by his wife and her advisers.

Q. How had he been plundered; what property and where?

A. Yes, sir.

Q. What was it?

A. That he had his household furniture, some things of great value to him had been carried off out of his own house to some building here in San Francisco, where there were some things on storage; that they had been carried off also; that the doors had been broken open in the night time, and he called it a burglary.

Q. Did you make any investigation of these matters to see whether his suppositions were true or not?

A. I did of the general matter; the whole subject.

Q. What was the result?

A. The result was that I did not take any active steps about the matter at all.

Q. Did you find whether or not any of this property had been appropriated by anybody during his absence?

A. I was so informed.

Q. That was the conclusion that you reported to him?

A. Yes, sir.

Q. After investigation? Well when he told you that he suspected his wife was unfaithful and that she had improper connection with Mr. Fitzgerald, did he tell you what led him to that belief?

A. No, sir. He did not give me any particulars of it. Many questions that I asked him concerning these things, he refused to tell me, and told me that that was what he wanted me for; that that was the reason he asked me to come and see him. He didn't want to tell me but wanted me to tell him these things.

Q. Did he tell you that he had received any information of that fact from any one?

A. Yes, sir; he said he had information but he would not tell me from whom it came.

Q. He told you that he had information of that fact, but did not inform you who his informants were?

A. Yes, sir.

Q. Were any of these communications that he showed you private letters in manuscript, or were they all printed matter?

A. He showed me some anonymous letter that he had received; some scurrilous thing that didn't amount to anything.

MR. BARNES—You mean that he said he received?

A. Yes, sir.

MR. PRATT—He showed it to you; did he read it?

A. Yes, sir.

Q. Did it have any bearing upon the conduct of his wife?

A. No, sir.

Q. Did it contain any threats, or anything of that kind, towards him?

A. One of the communications that he showed me, said something bad about him.

Q. Said something bad about him?

A. Yes, sir.

Q. That was threatening was it?

A. Yes, sir.

Q. Were the communications generally abusive of him?

A. Yes, sir.

Q. And displayed a feeling of hatred and animosity towards him?

A. Well, it was dirty business, the whole affair I thought, and I didn't pay much attention to them.

THOMAS ANSBRO, called for Contestant. Sworn.

*Examined* by MR. BARNES.—Q. How long have you lived in this city?

A. Since 1855, sir.

Q. What has been your occupation?

A. Various things. I have been a detective and special officer for the last twelve years, or thereabouts.

Q. What was your business in 1870?

A. Detective, as usual.

Q. Did you know Mr. Hawes in his lifetime?

A. I did, sir.

Q. How long did you know him?

A. I cannot testify to the date, but six or seven years, I think; that is, personally.

Q. You knew him by sight and reputation, before that?

A. Yes, sir.

Q. At any time during the year 1870, did you have any conversation with him, in relation to your employment by him?

A. Yes, sir. He had conversation with me somewhere on Montgomery street.

Q. Can you state when that was?

A. I cannot tell the exact date, sir, nor the month, probably; I think in the month of October or September, after he came from Europe. I am not positive about the day or the month, but sometime after he came from Europe.

Q. Did he say anything to you, with respect to his wife's conduct, while he had been away, and so on?

A. He did, sir.

Q. What did he tell you ?

A. He asked me if I would work up a case for him, and he said it was rather a delicate one. I told him yes, of course, that was my business. I told him to explain the matter to me, and he said he would. He said that his wife—that he was afraid of being assassinated, and afraid of being poisoned, and that his wife was the party who was going to do it. I asked him the grounds of any suspicion; he declined to answer that. He said she was more of Mr. Bartlett's wife than she was of his, and he wanted to get rid of her. I told him at the time—he got furious, more furious, and I told him I would not have anything to do with it. So he said—I will tell you what he said. After I told him I would not do it, he said “I was a very little better than the balance of the thieves.” That was all of the conversation I had with him, sir, at that time.

Q. What was his language, with respect to its being profane, or otherwise ?

A. It was rather hostile towards Mrs. Hawes.

Q. I should suppose a statement of that kind would be rather hostile towards a man's wife, myself; but with respect to its being profane or blasphemous.

A. Yes, sir; he did get very disrespectful about her.

Q. What did he say ?

A. He called her a damned whore and a bitch.

Q. Did his manner express the regret that a man would feel in discovering such a thing as that, or not ?

A. I did not have much conversation after that. I left him at that time. I got so disgusted with his talk, and the manner in which he acted, and the conversation that he used.

Q. Did he exhibit any temper ?

A. Temper ! Yes, sir.

Q. What did he do ?

A. He was kind of mild about it; seemed to have as much feeling against the other gentleman, as about her.

Q. Did he say anything about him ?

A. Yes, sir.

Q. What did he say about him ?

A. He said he was a damned scoundrel.

Q. How did he use his hands and arms, with respect to gestures ?

A. I disremember, now, how he did use them, sir.

[No Cross-Examination.]

MR. BARNES—We will interrupt this branch of the case for a moment, and call Mrs. Ober.

MRS. J. E. OBER, called for Contestant. Testified as follows:

*Examined* by MR. BATES.—Q. Where do you reside ?

A. No. 913 Bush street.

Q. In this city ?

A. Yes, sir.

Q. How long have you resided there ?

A. Five years.

Q. Did you know Mr. Hawes in his lifetime ?

A. A few months only, before he died.

Q. Where ?

A. At his own house, on Folsom street.

Q. How happened you to go there, Mrs. Ober ?

A. At the request of the matron of the Relief Society.

Q. How did you find him?

A. I found him very ill.

MR. PRATT—Please speak louder.

THE WITNESS—I will try, sir.

MR. BATES—You found him very ill?

A. Yes, sir.

Q. How was he provided for?

A. He was very poorly provided for.

Q. Who was with him, if any one?

A. He was alone, with the exception of the small boy in his office.

Q. Can you state when it was?

A. No, I do not think I can give you any dates at all; but the day before he went to Redwood the last time.

Q. In the fall of 1870?

A. Yes, sir.

Q. It was before your brother went there, was it?

A. Yes, sir, several months before.

Q. Well. State how many times you saw him, please.

A. He had been back from Redwood some time before I saw him again. When I again visited him at his own request, made to Mrs. Harmon, the matron.

Q. Will you please tell what you did for him, in order to—please state if you took anything to him?

A. I did for Mr. Hawes just as I would do for any person whom I visited when they are ill. I took him all those little comforts which it was in my power to give him.

Q. Will you please state some of the things you took him?

A. It is very painful for me to do it.

Q. Please state what things; anything to drink, or to eat, or anything of the kind?

A. I took him a bottle of wine, and I carried him jellies, and any little things that as an invalid he could take.

Q. What was his condition with regard to the ordinary comforts of life?

A. He had not the ordinary comforts of life; and, situated as he was, it was impossible to have them.

Q. Why impossible?

A. He was there alone in his office, and it was impossible to keep a nurse with him; I think, from his own irritability, perhaps.

Q. Was Mrs. Hawes there during the time?

A. Not at first.

Q. Did she afterwards come?

A. Mr. Hawes telegraphed for Mrs. Hawes to come and take care of him, and that was the last of his illness—perhaps a month before he died. Maybe longer; I cannot tell.

Q. How did he seem after she came?

A. He changed very much after Mrs. Hawes came. He was very irritable.

Q. Won't you please state fully, just how he acted, Mrs. Ober?

A. With my own personal knowledge, I can say but little of Mr. Hawes' treatment of his wife. I went there but very little after she came, and saw but little of her.

Q. Won't you please state what the change was; how he spoke to her, and how he treated her when she did come?

A. I don't know that he ever spoke to her at all in my presence; and the first time I met Mrs. Hawes, I did not know that it was she. Mr. Hawes did not introduce me to her, and it was only after he left the house in his carriage. I had taken out a nurse to him that morning, and the young man came and addressed her as Mrs. Hawes.

Q. What was Mrs. Hawes doing?

A. Mrs. Hawes was in the house, just as I had met other ladies there.

Q. Where was she; in what part of the house?

A. I met her in the outer office, coming into the library.

Q. Was he then present?

A. He came into the library a few moments after I came in, and was dressed to go out. The carriage was waiting for him at the door when I came.

Q. Did he say anything to you about his food—the preparation of it?

A. Yes, sir; he felt as though everything he was taking was medicated.

Q. He thought everything was medicated?

A. Yes, sir.

Q. By whom?

A. He did not say; he mentioned no names.

Q. Do you know what he meant by being "medicated?"

A. I have no idea beyond what the term conveyed.

Q. Did he talk to you, Mrs. Ober, about his wife?

A. When I first went to see Mr. Hawes, and on two or three occasions, he did say something against his wife.

Q. Won't you please state what he said. The substance, if you don't recollect the exact words?

A. I do not think I can state even the substance of what he said; but I found he disliked her. He seemed to have a hatred for Mrs. Hawes (and I cannot characterize it by any other word), an intense dislike. When I suggested that he should have his wife take care of him—that was the first of my visiting him—he said he could not have her; that she was killing him; killing him by inches; and that he told her so; and that he wanted to be at peace and quiet, to mature his plans.

Q. Did he say what those plans were?

A. He did not.

Q. Did he say at that time in that connection, what he was going to do with his property?

A. There was nothing said of his property.

Q. Did he say to you at any time you were there, what bequests, if any, he intended to make—if he had made up his mind to make any bequests, and what shape he was going to put it in?

A. I heard him one time, in conversation with Rev. Mr. Lathrop, say that he had not made up his mind in regard to his bequests; and he spoke of founding a hospital where people like himself could go and be taken care of.

Q. What seemed to be the condition of his mind, while you were there?

A. It was most unhappy.

Q. From your own observations of him, Mrs. Ober, did you form any opinion as to his sanity in regard to his wife?



A. I did.

Q. What was that?

A. I considered him a monomaniac.

Q. Did you treat him as such?

A. In all my intercourse with Mr. Hawes, I treated him just as I would an insane person.

Q. Did you know what became of that nice wine that you took him?

A. I don't know what became of it.

*Cross-Examination* by MR. PRATT—Q. I understand you to say you never knew Mr. Hawes personally until these visits?

A. I never saw Mr. Hawes before.

Q. During how long a period did these interviews between Mr. Hawes and yourself continue?

A. I don't know when my visits to Mr. Hawes commenced. He had been here sometime after he returned from Redwood; and had been very sick when he sent for me. I visited him every day for a long time; from that time; unless something happened to prevent me, every other day, and every day until after Mrs. Hawes came up to take care of him. The dates I cannot give you.

Q. You can approximate?

A. It seems to me two months; it seems a long time to me.

Q. After Mrs. Hawes came there, you went but very little?

A. Very few times after Mrs. Hawes came out.

Q. You say that you regarded him and treated him as a monomaniac at that time?

A. I treated him just as I would an insane person. What I mean by that is humoring him in everything that he said; never contradicting him in anything, or reproaching him.

Q. He was in a very feeble condition at that time, physically, I suppose?

A. Very.

Q. You have had considerable experience, or at least have had considerable opportunities to observe these symptoms and effects of consumption I suppose, on different persons?

A. Yes, sir.

Q. It is one of the direct results of that disease, is it not, to make the patient nervous and excitable?

A. I never saw any one in my life in the condition Mr. Hawes was in.

Q. You never saw any one in the condition Mr. Hawes was in?

A. No, sir.

Q. You arrived at the conclusion that he was a monomaniac, did you?

A. In regard to his wife, yes, sir.

Q. That conclusion was based entirely upon what you observed in his conduct while you were there?

A. Yes, sir.

Q. Now be kind enough to state the facts from which you arrived at that conclusion; what did you see him do towards his wife, or hear him say to her, which led you to believe him insane on that subject?

A. You could not mention his wife's name to him without his being enraged.

Q. Is there anything else beside that fact?

A. I think there was a great deal; but I do not recollect now.

Q. While you were there did you hear him express himself in regard to his children?

A. Yes, sir.

Q. What seemed to be his feelings toward them?

A. He seemed to be very fond of his children; but seemed to hate his wife very much.

Q. Did you hear him express himself in regard to any other persons?

A. Yes, sir; a great many.

Q. How did he express himself in regard to those other persons?

A. I never heard him speak well of any person; with the exception of his early friends; and those he could hardly mention without weeping, and his recollections of them were very tender.

Q. Was he abusive of any one else except his wife at any time during your stay there?

A. I never heard him express himself very harshly in regard to them; but it was very different from what it was when his wife was present—a different feeling.

Q. You say you went there every day during this period, how long did you usually remain there? All of the day?

A. Sometimes an hour, sometimes a few moments, just as he had need of me. When he was alone I remained with him until some person came.

Q. Were there frequent callers at the house during the time you was there?

A. The last part of my visit to Mr. Hawes, there were a great many visitors; but the first of my being there no one came to see him; he seemed deserted by everybody.

Q. Did you know any persons who were in the habit of calling towards the last of your stay there.

A. Yes, sir; I knew a great many that called.

Q. Who?

A. I think Mr. Lathrop was a visitor there, Mr. Jewett from San Mateo.

Q. Any one else that you knew?

A. Mr. and Mrs. Barstow—George Barstow. There were a great many, I cannot recollect them.

Q. Was there any one who called there habitually or frequently, any particular individual during that time?

A. I don't recollect.

Q. Do you know Washington Bartlett?

A. Very well.

Q. Was he there during your stay there?

A. I know that Mr. Bartlett was there; but I think perhaps I didn't meet him more than once or twice there.

Q. How many times while you were there did Mrs. Hawes come into his presence when you also were present?

A. I never went there after Mrs. Hawes came without inquiring for Mrs. Hawes, and her coming in to see me, but I cannot tell you the number of times that I was there.

Q. She always came into the room?

A. Always, but never without my sending for her.

Q. About how many times were you probably there after Mrs. Hawes returned?

A. I cannot tell you.

Q. You can approximate? More than once?

A. Yes, sir; more than once.

Q. Ten times?

A. No, I think not so many.

Q. Half a dozen, perhaps?

A. It may be; I cannot tell you how often I went—how many times I was there, I don't think I was half a dozen times.

Q. Never saw Mrs. Hawes on those occasions except as you sent for her to come into his room?

A. No, sir.

Q. Did she always come?

A. Always.

Q. Always called on you in Mr. Hawes' room?

A. Yes, sir.

Q. How did Mr. Hawes treat her on those occasions when she came into the room?

A. He didn't take any notice of her at all.

Q. Did he ever talk to you about his wife after this return to him; after she came back there?

A. No, sir.

Q. All the conversation and abuse of his wife took place before she came home?

A. He has never mentioned his wife's name to me after the first of my visits to him. He found it was very distasteful to me, as I presume, and never recurred to the subject again.

Q. Did you have more than one conversation with Mr. Hawes about his wife?

A. Yes, sir; two or three.

Q. When you first began to go there?

A. Yes, sir.

Q. Was there anything else except what you have stated to lead you to the conclusion that he was insane or a monomaniac?

A. It was his general conduct.

Q. It was his general conduct?

A. Yes, sir.

Q. In regard to her alone do you mean; or his conduct in regard to all his business?

A. His conduct in regard to many other things.

Q. Well, what other things now besides his family affairs?

A. I cannot recollect them; very little things.

Q. Now let me ask you, then, what you mean by saying that he was insane. Do you mean simply that he was childish, whimsical, capricious?

A. I don't know what you would call it.

Q. You don't mean to say that his reasoning faculties were lost or destroyed entirely?

A. No; I don't want to say that.

Q. You mean to say that he still had possession of his reasoning faculties, but was whimsical—

A. To that extent that I think it was insanity with him.

Q. Either exceedingly eccentric, or a little insane?

A. It was beyond eccentricity.

Q. It was beyond eccentricity?

A. Yes, sir.

Q. You arrived at that conclusion, however, only from the facts which you have stated to the jury?

A. No; there are a great many more facts.

Q. Then be kind enough to state those other facts?

A. There occurred every day occurrences too small even to recollect.

Q. Can you state now any one of those occurrences, as you term them. Can you recall any one of them and state it to the jury?

A. Yes, I think I can; but I don't like to.

Q. I am sorry to press you, Mrs. Ober, but it is necessary that the jury should particularly know the means by which you have reached the conclusion you have testified to.

A. One day I was there when the Chinaman came for his washing, and the nurse that was with him then could not read, could not write. He asked me to make a list of them, and I did so, and gave him a copy of the list, and one to the man, and tied the clothes all up in a bundle for him, and took the list in to Mr. Hawes; and he was not satisfied with that, but he wished to see the clothes himself. He had them all brought in and untied, and each article held up separately, that he might see it, and compared it with the list that I had made, and gave it to me, and then had them tied up and sent away. The whole of the clothing I don't think would have brought six bits if they had been sold.

Q. That is one circumstance?

A. That is only one of many. That was a fair sample of everything.

Q. Did he find the articles to correspond with the list which you had given him?

A. Perfectly.

Q. He was satisfied, then, was he, and sent the clothes away?

A. Yes, sir.

Q. Give us another instance of these little things, from which you inferred he was insane?

A. At another time he said: "I have plenty of money, but I can not go out to get me the comforts and necessary things that I need, and I wish that you would get them for me." I said: "Mr. Hawes, I will get you some pocket-handkerchiefs, you need them very much indeed." And he said he would be glad to have me get them. And the next day he came to my house. He was there two or three hours; and I showed him some pocket-handkerchiefs that I had just purchased, and said I would get him some of them; and he was pleased with them, and a day or two afterwards I carried him out the box of pocket-handkerchiefs, and he was distressed about them, and went into such a fever of excitement over them, that I said: "Mr. Hawes, I will take them back; you need not keep them unless you like them." He said: "I wish you would; I will be unhappy every time I see them." I kept the handkerchiefs myself, as they were already paid for.

Q. What was the ground of his complaint?

A. The expense.

Q. Now, give us one more instance, if you can recollect any other.

A. I can recall a great many, but they were of very small magnitude; but it was the same in everything.

Q. They were all of the same general character?

A. Only some of them of very much less importance than those two.

Q. Can you recall one of those which you say was of very much less importance than these?

A. I could recall my engaging nurses for him. He would keep one about twenty-four hours; that would be the extent.

Q. Did he assign any reason for discharging his nurses?

A. No; there was no reason about it. If they happened to do something he didn't like, he would send them off; and he would send them away, and leave himself entirely alone. One night he sent into my house at ten o'clock; he had discharged everybody in the house, and the last one that he had discharged, was a young man. He came in for my brother, to go out with him, but, before my brother got there, some one had gone to the house. I think Mr. Bartlett was there at that time.

Q. That is simply, then, that when a nurse did something which didn't suit his particular whim or caprice, he discharged them. Paid them, did he?

A. Yes, sir, paid them.

Q. Well, was there anything else?

A. One young man, that I engaged for him; he felt afraid that he would *assassinate him*. That was the first night that he was there.

Q. He discharged the young man, did he?

A. No; the young man remained. My brother got some person to go and stay in the house with him.

Q. He expressed fear that this young man would assassinate him, though he still retained him in his employ?

A. Yes, sir.

Q. For how long a time?

A. Almost a month, I think, or more; I cannot tell how long.

Q. Was there anything else that you think of now?

A. I don't think of anything.

DAVID B. JACKSON, called for Contestant. Sworn.

*Examined by MR. BARNES.*—Q. How long have you resided in this city?

A. A little over twenty years; that is, I have been here off and on.

Q. Did you know Mr. Hawes in his lifetime?

A. Yes, sir.

Q. How long had you known him before he died?

A. Well, to take any notice of him, about fourteen or fifteen years.

Q. Did you ever have any business relations with Mr. I. W. Raymond?

A. Yes, sir.

Q. What were they?

A. I was clerk in the office.

Q. Of what company?

A. The North American Steamship Company.

Q. Were you ever a messenger, or transacting any business between him and Mr. Hawes?

A. Yes, sir.

Q. When was that?

A. As near as I can recollect it must have been about 1867 or 1868.

Q. What was the nature of that?

A. Well the last business Mr. Hawes advertised for a Superintendent.

Q. Let me ask you whether he advertised in his own name?

A. No, sir, he did not. I was just going to explain that, I used to see the advertisements in the paper signed I. W. Raymond, and to make application to the office, and I thought it was very strange that Mr. Raymond should ask for a Superintendent and he told me that it was not for him, that I would see eventually who it was for; and I found out it was for Mr. Hawes, and every afternoon he would take the applications and put them in a package, and I would take them to Mr. Hawes' house, provided I could get in, and give them to him, and I would sometimes stay there about three quarters of an hour.

Q. Did you ever go there on any occasion when Mr. Hawes and you had a talk about his wife?

A. Well, I rung the doorbell there one day a dozen times, and no one came to the door, and I was about going away, but I looked up—and I saw a female in the window; and I thought I would go back to the house, I kept ringing, and finally a lady came to the door. When I went in he wanted to know of me if "that woman" let me in; and I told him the lady let me in.

Q. Where did you go?

A. To Mr. Hawes' parlor.

Q. Who opened the door?

A. I afterwards found out it was Mrs. Hawes herself.

Q. You went into the room where he was sitting? What did he say?

A. He wanted to know what I wanted. I told him I brought letters from Mr. Raymond. He did not ask me for them, but he grabbed them out of my hand. He said, "they are trying to kill me;" but I paid no attention to it, knowing he was rather eccentric. He got talking to me, and wanted to know all about every man that had made an application.

Q. What did he say about the woman?

A. Did that woman open the door for you? I said it was a lady opened the door for me. It was not the one who I saw in the window. He asked me about everybody. I said I didn't know about these applicants. I only knew one man so far as I am concerned, whom I would recommend if you were to ask me. He said I don't trust anybody. Upon that there was some gentleman who come in who had some business connection with him about making some bricks, I was sitting there in his office waiting if he wanted to sign the applications. It took two or three minutes time I thought that Mr. Hawes was going to club him.

Q. What did he do and say?

A. Something about trying to rob him. He told him: "I have made no contract with you at all; I have merely brought a sample." He said he was like everybody else; he was trying to rob him; not alone trying to rob him, but trying to kill him. I thought it was no place for me to be, and I got up and asked him if he had any message to send on; if not, I would go, as I lived down on North Beach, and it was a long ways; and he said: "Well, go on; go down to North Beach, and stay there."

Q. When he said to you, "Did that woman open the door for you," what was your answer?

A. I said it was a lady opened the door for me.

Q. What did he reply to that?

A. "Ahem!"

Q. That is all he said?

A. Yes, sir.

Q. Did you go there at any other time when you had a conversation with him about that subject?

A. About the applications?

Q. Yes, sir; or Mrs. Hawes?

A. No, sir; I never had any conversation about Mrs. Hawes. I didn't know her, with the exception of one day when I went there, I think she was coming out of the house with the children.

Q. How do you know that the person who opened the door for you was Mrs. Hawes?

A. Some one told me there—a man who had charge of the garden, or fixing up something outside. He remarked to me that it was a hell of a place.

Q. What?

A. He remarked to me that it was a hell of a place—some man working on the garden.

*Cross-Examination, by MR. PRATT*—Q. Do you know Peter Harkins?

A. No, sir. I may know the man, but not by name.

Q. You don't know that he was the man who remarked that that was a hell of a place?

A. I don't. I wouldn't even know Mrs. Hawes, probably.

Q. Mr. Hawes had known Mr. Raymond, I suppose, for some time prior to this?

A. I think he has known him ever since he has been in the country.

Q. Had a good deal of business with him?

A. I think so, sir.

Q. And he has advertised for a week—persons to apply at the office of I. W. Raymond & Co.?

A. He didn't advertise; the advertisement was worded the same as if Mr. Raymond himself was making the application for superintendant of a large estate.

Q. Mr. Raymond's name signed to it.

A. Yes, sir.

Q. Mr. Raymond understood that, didn't he?

A. Understood what?

Q. When the applications came there, he sent them over to Mr. Hawes by you?

A. Yes, sir.

Q. Now you say the only occasion you went out there with the package of letters, Mr. Hawes grabbed them away from you without asking for them. He was very overbearing and rude, wasn't he, in his manner; was not a man polite and gentle?

A. I think he was pretty rough at times; yes, sir.

Q. Somebody came in to say something about some bricks?

A. Yes, sir.

Q. What was the conversation about the bricks; did he present a bill?

A. No, sir; he presented no bill.



Q. He proposed to make bricks?

A. It seemed to me as though he made a proposition, or something of that kind, to make them for him.

Q. Did you infer from the conversation, there had been some prior conversation about that?

A. No, sir; I think that was the first time—he brought two bricks.

Q. He brought two bricks with him?

A. Yes, sir.

Q. And in the course of the controversy, Mr. Hawes got very much excited. You say you thought at one time he was going to club the brick man. What induced you to think there was danger of that? Did he make any demonstration that way?

A. The man went out very fast.

Q. Did Mr. Hawes tell him to go?

A. No, sir; he didn't tell the man to go out. I know the man—he opened the door.

Q. How long did this interview probably last?

A. I would not swear; I don't think that he was there over three minutes.

Q. Very soon after that you went to North Beach?

A. Sir?

Q. Very soon after that you went to North Beach?

A. I didn't like to stay there.

MRS. L. A. BLANCHARD, called for Contestant. Sworn.

*Examined by Mr. BARNES*—Q. Where do you reside?

A. 711 Taylor street.

Q. Did you know Mr. Hawes in his lifetime?

A. Never until I was requested to go there.

Q. What time was that?

A. It was about—it was the first week in January.

Q. In 1871?

A. Yes, sir; 1871.

Q. Who requested you to go there?

A. Mrs. Ober was one of the first.

Q. Did you go there as a nurse? ●

A. Yes, sir.

Q. Had you ever known him before?

A. Never.

Q. For the discharge of what duty did you go there?

A. Well, he at the time I went there had two office boys and a servant in his family. I was to go there to take care of him and read to him, and attend to some writing and to do no manual service. I first objected to going there, as he was a married man and had a wife, and I knew nothing of the circumstances. My own friends advised me to go there, for they thought I could get along with him.

Q. When you went there, did you have any talk with him about how long you should stay?

A. Not at all; but his idea was that I would remain there his lifetime.

Q. How long did you stay?

A. I was there eight days from the ninth of January.

Q. Why didn't you stay there all of his lifetime?

A. The first three days before I went there he talked beautiful. I judged—I supposed he was a Christian and would treat me as a Chris-

tian woman. After three days—the first three days I was there he was very quiet and orderly, and I think the first of his becoming any other way, I spoke one evening in regard to his wife about her as being agreeable and pleasant. He says: “Well, I do not think so;” and he went on and told me that she was not an educated woman; not fit to go into society that he went in, and he named over a number of different prominent men that he could visit; that he was ashamed of her; and I never spoke of Mrs. Hawes from that time. From that time he began to put more and more manual labor upon me, and the last night I was there he would not permit me to come into his room at the call of his bell, but had a gentleman to go and stay with him. He took one of the office boys in his room. I heard the bell ring, and feeling interested, although I was going away the next day, I stepped to his door, and he spoke up to me and said that he had no use for me at all; that I could leave.

Q. Did he have any conversation with you with reference to his own greatness?

A. Yes, sir.

Q. What did he say about that?

A. There was a great deal of conversation upon that. I judged from his conversation that he was the greatest man that existed; that he was going to do many great things; I could not enumerate them.

Q. What did he say he was going to do?

A. He told me of different institutions that he was going to found, and he said that he thought he was conferring a great honor or a great favor upon me; that I would be there at his deathbed, which he often pictured out, and whom he wished to be there.

Q. What did he mean?

A. He said that the time was coming when all the children of these institutions he was instituting would cluster around me, glad to hear anything that Horace Hawes had said, and I could say that I was at his deathbed. He named many men that were to be there, but only one I can remember; that was Governor Haight.

Q. He said that he wanted Gov. Haight to be there, and see him die?

A. Yes, sir.

Q. In his last hours he named others?

A. This is the only one that I can remember.

Q. He was picking out those that he would have present around him when he died?

A. Yes, sir, that he would have around him when he died.

Q. You say he pictured his death to you?

A. Merely spoke of his last hours, and whom he wanted to be there.

Q. How did he speak of his last hours?

A. No particular way; he seemed willing to go.

Q. Did he talk at all about a future state?

A. Not at all; before I went there he spoke in regard to my coming there. He wanted me to come on Friday. I did not wish to come until the next week. I said: “Mr. Hawes, have you decided whether you want me to come or not?” He spoke in a very kind manner, and says: “If I am alive I should like to have you come, but life is uncertain, I might not be here.” And I made the remark to Mrs. Ober that the monotony of the sick room must be relieved by a man like him, in his beautiful spirit and condition.

Q. And he continued in that beautiful state until you mentioned Mrs. Hawes in a complimentary way?

A. Yes, sir.

Q. But the moment you spoke well of her, he commenced at you?

A. Yes, sir. In the morning as he wanted egg-nog, and he advised me taking one too, as the sick-room was rather laborious, and the confinement—it would benefit me.

Q. For three days, that was?

A. Yes, sir.

Q. After that, did he suggest that beverage?

A. He became unbearable. No; he didn't, then.

Q. Do you remember any interviews that he had with his boy about building a fire?

A. I do, sir.

Q. Won't you tell it?

A. He was very particular about the thermometer. It must be at just such a point. I was very particular about it. One evening he called the office-boy in, and wanted him to make a fire; and he came in and made it according to his direction.

Q. How did he tell him?

A. He made it according to his directions—a very large fire; but it was not a cold day, and I saw that he was getting very warm, and I am sure I was, and he says—finally he talked to me.

Q. What did he say?

A. He spoke to me, for Jesus Christ's sake, to put out that fire. He thought it was hotter than the infernal regions. When I first went there, he would not allow me to make fires; but after these three days he managed to have me make them; that I ought to know better than to allow a boy to come into the room and make a fire.

Q. Did he ever make any comparison between his wife's qualities and his own?

A. Yes, sir.

Q. What?

A. That he was far superior in every respect; and that she was a bad woman—not fit to have charge of his children.

Q. Well, what did he say with reference to her as compared with him as to benevolence, selfishness, and those qualities?

A. He said one great difference between them was, that she was all selfishness, and he all benevolence.

Q. Do you remember his giving you any instruction with relation to the curtains of the windows to his room, and what transpired after that?

A. I do.

Q. What was that?

A. Every day he kept putting more and more upon me. In the first place, the boys would open the shutters at such an hour, and after that, he struck the bell, and gave me to understand the first thing in the morning I was to do was to open the shutters, and raise the curtains at just such a height. I did this for two mornings. The third morning, I was about doing so, when he screamed out, "Don't you know better than to raise the curtain and let a sick man see the fog?" I thought I would remember it the next time. The next morning after that, I did the same thing, and he again cried out to me and wanted to know what I was doing. I said I was lowering the curtains, so that

you shall not see the fog; it is a very foggy morning. He was exasperated, and made me go to the curtain again; and twenty times I raised and lowered it to get it at the right condition; and if I could not get it to suit him, he would try to adjust it himself.

Q. At this time was he confined to his bed?

A. He was, partly. He rode out twice during the days I was there; and he was able to get up and dress himself. At times he was violent; at times I should suppose he could live but a little time, and he would become entirely exhausted.

Q. During these times how did he behave himself, with reference to personal decency?

A. He seemed to lose all regard for those that were around him. I looked upon him just like an imbecile child, or an old man that had lost all sense of propriety.

Q. Was that indecent conduct extreme?

A. No, sir; not toward me. He had a good deal of company while I was there, which I was very glad of, because it gave me a good deal of time out of the room, and he was then closing or about closing a contract for his new house.

Q. How was he with regard to himself, and decency, with respect to himself?

A. I don't think he had any.

Q. Did you do any book-keeping while you were there?

A. I did, sir, very little.

Q. What amount of money did you handle there?

A. He gave me so much money a week; but there was some when I went there, in the drawer.

Q. How much?

A. I could not tell you how much. A book had been kept there before I came. I did not know what kind of a man I was dealing with, and I did not balance the account. When I was going away, he asked me if I balanced the account, and I told him I did not. It was seventy-five cents short, and it was taken out of my pay. If it had been five or six dollars it would have been the same. I knew the mistake was not mine.

Q. What was his demeanor towards you with respect to what you did, or what you failed to do, that he did not allow.

A. He never would allow me to give a reason. If I was going out of the room and should step to the table and take anything to take it, he would tell me to go away—he did not want any false steps or false motions in his presence.

Q. How often did he talk to you in that way?

A. Continually, at least until I told Mr. Everett—I had been there a week, and that day he was out to ride—my son came and he found me weeping; he said “mother, why do you stay?” I told him “I am not going to.” I told Mr. Everett my week was up. I tried for Mrs. Hawes' sake to stay. I said my week is up, and I never submitted to any such treatment before, and said I could not stay. Mr. Everett said I was doing better than any one else, and I must try to stay; the sick room had been cleaner, etc. He agreed himself, to pay me twenty-five dollars a week, and I was told if it was worth more I should receive it, but the last few days I could not keep any servants.

Q. Why not?

A. I had two in four days. A different nurse would come there, and I would talk with them, and think they were just what I would

want. They would come in there, and have a talk with him, and one old lady came out crying. He hurt her feelings very much, and he said to me, "I should think you ought to have known better than to send any such hag." She was a [very nice-looking old lady. I thought perhaps he thought I was not earning my money, but that he wished to put more upon me. He didn't hire any one.

Q. Did he ever talk with you at all, about any threat of injury to him?

A. Well, he did. The first thing that I done when I went there was to relabel all the bottles, everything that was there, wines that had been sent him by different parties, relabeled it in a very prominent hand, showing just whom the wines came from, and among others was Mrs. Ober's, and showing what they were. And after I would tell him what they were, he would want to see himself, and after I had labeled them, he went to look at them himself, and asked me if I could read it. I told him I could.

Q. After you had written it, and put it on the bottle, he would ask you if you could read it?

A. Yes, sir, and when I knew what it was. Then at one time he told me he was afraid of his life, and was afraid that I would do something to put him out of existence. He repeated, also, that he told Dr. Bennett that he was dying from starvation, and I would not even allow the servants to go out and buy what he had, but I went out myself and bought the best that the market afforded.

Q. You did?

A. Yes, sir, I carried it to him, and he would eat it from three to five times a day, heartily.

Q. So, this representing that he was starving—

A. I think he did that when he was surrounded with plenty, Mrs. Ober felt gratified to think I went, and to feel that he was cared for.

Q. Mrs. Blanchard, how did he sleep at night?

A. Very well, generally; sometimes he would be wakeful, and ring the bell often, and at other times, he would be sleeping so still and quiet, that he would look so, that I would get up and go to his room, and find him sleeping—quietly as an infant. Sometimes he would make a great noise in his sleep, and when he was still, I would feel sometime that he was so feeble, that he might die in the night.

Q. Was Mrs. Hawes ever at the house, and taking care of him?

A. Mrs. Hawes—well, there was a person there when I went there and gave him my letter of recommendation, but I did not know who she was at the time.

Q. Did you see her in the room with him?

A. She was not; she was sitting in the office.

Q. In the office?

A. In the library.

Q. Where was he?

A. He was in his room that day, dressed, sitting up.

Q. In his room dressed, and she was in the other room?

A. Yes, sir.

Q. Doing what?

A. Sitting by the door, doing nothing.

Q. Just waiting on him?

A. Like a person wanting to go into a room to see another, but

I think Mrs. Ober was there at the time, or she came up and recognized me, but I did not recognize her until she spoke to me.

Q. Then you went in to see Mr. Hawes?

A. Yes, sir.

Q. At any time while you were there were he and his wife together in your presence?

A. Mrs. Hawes went away; and I was told that she was turned out of doors.

Q. Never mind what you were told. Did you see them together at any time?

A. I did, sir; but not at that time.

Q. When was that that you saw them together?

A. It was when I was going away, I had been there a week, and when Mr. Hawes came in from his ride; I told him I was going away. He said to me, "I don't want you any longer." He says, "how long have you been here?" and I was a little over a week; then he says, "you must stay your day out, every hour." Then, as he had failed to get any one to come and stay with him, he either telegraphed or sent for her, and she came the next day. And at different times, every time she had an opportunity, she sent him nice things, and that time she came and met him very pleasantly, and brought him some things.

Q. How did he behave toward her?

A. I didn't see them together; I was out of the room, as I was getting ready to go away, and she was preparing food for him.

Q. What day was it that he said he was afraid you would put him out of the world?

A. I think I had been there about five days.

Q. What led him to make such a remark as that. Did you make any attempt upon his life?

A. I didn't do anything at all, sir.

Q. What was it that led him to make such a speech as that; can you form any idea?

A. As near as I can account for it, I have supposed it was on account of the bottles of medicine I gave him, because he was very much afraid when I gave it to him; and I would always have to look two or three times. I had the bottles in just such places, and then I would have to make a very careful examination to be sure I was right.

Q. In what connection was it that he said that he was afraid of his life at your hands. How did he come to make that remark?

A. I don't remember, sir, what I was doing. I was preparing then to go away, when he seemed to be exasperated. He thought I hesitated about going out of the room when I was going to give him the medicine, and he was very much afraid. He would not use anything but a pewter spoon. I had a silver one, but the pewter spoon was taken out of the room; and I started to go out for it, and he thought I was a little confused. He seemed to think that I didn't know what I was about. He says: "I am afraid at any time or moment you may do something (or anything) to take my life." I think that was the reason, because he thought I didn't know what I was doing.

Q. Did you notice any difference in his manner, and conduct, and language, when you were alone with him, and his conduct and manner when any of those gentlemen that he was proposing to make trustees or otherwise of his benevolent schemes, were there?

A. I did not; I always withdrew. I don't know how—

Q. How long have you been nursing?



A. I have followed it for the last three years, or so. I never followed it at home, although I have always been with sickness in my own family, and with relatives; in any cases, they would always send for me. But I had never done it for pay until I nursed a lady, at her request, at the Cosmopolitan Hotel. I was housekeeper there for seven months. Since then I have followed it—not steady.

Q. Have you ever had anything to do with insane people?

A. I have had two instances.

Q. In what way?

A. One was a lady that was pronounced crazy, but not violent, with the exception of to her own immediate family; and they wanted me to go; they thought that I could control her. They wanted me to go and see what I could do with her; they thought she would be milder with me. I was there a week, and she was very quiet all of the time; I could control her perfectly. At the expiration of the week, her brother's wife thought she had been so quiet—

Q. [Interrupting.] Without going into the details of that case—

A. [Continuing.] She thought at the expiration of this week she would go into her presence to see what the change would be; and she immediately seized her by the throat, was very violent, and I had to separate them, to save her life.

Q. Where?

A. In Boston.

Q. And in another case you say you had charge of some one insane?

A. Yes, sir; I had charge of a cousin of mine that was injured. His wife was sick, and not able to be with him, and by the request of the physician, I left my own family and went to him. He was under Dr. Buckalew, and he would be violent with different nurses; and he would have, perhaps, two watchers. He would be very violent; but I had perfect control of him. He afterwards went to the Insane Asylum.

Q. From your experience, and what you observed and saw of Mr. Hawes while you were there, did you or not form any opinion with reference to his mental condition?

A. I thought he was the worst person to get along with that I had attempted to.

Q. I mean with reference to his being of sound mind or the reverse?

A. I think he could not be of very sound mind, to do a great many things that he did, I thought that he imagined a great many things that were not so.

Q. What did you think—did you form any opinion in reference to his being an insane or crazy man?

A. I thought he acted as though he was crazy, or more than that. He didn't seem to know, or show any reason with regard to certain things.

Q. What things do you allude to?

A. Well, I don't know of anything, any more than I have related to you. It seemed to me that if he had any reason, he could appreciate what was done for him.

THE COURT—I suppose you will hardly finish the cross-examination before one or two o'clock. We will adjourn until Monday next, at two o'clock. The ordinary business of the Probate will require attention Monday.



## SIXTH DAY.

MONDAY, NOVEMBER 20th, 1871.

*Cross-Examination* of MRS. BLANCHARD by MR. PRATT—Q. You were there at Mr. Horace Hawes' house the first week in January, I think you said?

A. I went there the ninth.

Q. You went there the ninth of January; what time did you leave there?

A. I was there eight days.

Q. Did he discharge you, or did you leave his employment?

A. Before I went there I was told that he might discharge me three or four times a day, but not to mind him. The Monday I had been there just a week, and he had been out to ride, and I told Mr. Everett that I could not stay—when he came home I told him I could not stay. He said: "very well, I don't want you to; I have no use for you at all." I told him I would go.

Q. You first introduced the subject of going away, then?

A. Yes, sir; at times he had said, "you may go, and I will get somebody else," which I took no notice of, and he would recall what he said and ask me to stay.

Q. He required you, however, to stay the balance of that day?

A. He required me to stay the balance of that day, as I had commenced.

Q. About what time of day was it when he returned from the ride, and you informed him you were going away?

A. It was about noon.

Q. Did he pay you for your full time?

A. With the exception of the seventy-five cents he had deducted.

Q. In your direct examination, Saturday, you stated that you looked upon him as an imbecile child, or an old man. What do you mean by saying that you looked upon him as an old man, that had lost his senses?

A. Well, in the manner in which he spoke to me, and what I would do for him—indelicacy.

Q. Do you mean to say that his reasoning faculties were gone; that he didn't understand?

A. I think when he was opposed his reason seemed to forsake him.

Q. When he was opposed, his reason seemed to to forsake him. How was he at other times?

A. I think, in regard to the fact of speaking of his wife, I think he was—I would call him a monomaniac in regard to his family. I think so far as I know, in regard to business transactions, he might be very accurate; although, the last day I was there, he didn't wish me to keep any more accounts. He said he would look out for them himself; that he would perform that himself; he didn't wish me to do so any longer.

Q. Did not he, all the time you were there, himself supervise in detail the household arrangements and expenditures?

A. He did not, at all. He gave me the money, and gave it to me liberally when I first went there. He told me if I would answer his

requirements while he lived, I need not make any further provision for my future; I was provided for.

Q. He gave you the money to provide for household expenditures?

A. Yes, sir.

Q. Did he require from you an exact account of these expenditures?

A. Not until I left.

Q. Did he when you left?

A. He did.

Q. Did you exhibit the account to him?

A. I did not; I gave it to Mr. Everett, and settled with Mr. Everett.

Q. Do you know whether he examined the account, or not?

A. I do not.

Q. You only know the result—that he claimed that there was a balance of six bits unaccounted for?

A. There was, between Mr. Everett and myself.

Q. During the eight days you were there, what portion of the time did you spend in Mr. Hawes' room?

A. Well, I spent a great deal of time out of his room, which gave me recreation, on account of visitors, having so much company, and closing the contract for his house; otherwise I could not have staid my eight days out.

Q. Did you ordinarily remain in his room when nobody else was there?

A. I did the first three days; but the last part of the time I had no help in the kitchen, and I had to get along by myself. I was required to cook his food, and do other little things that he thought it took me a good while to do.

Q. During these three days, did you and Mr. Hawes have any conversation on any other subject than that of his wife, or the disposition of his property?

A. No, sir; I didn't speak of his wife during the first three days.

Q. No; but did you talk to Mr. Hawes on any subject during those three days?

A. I did not—nothing particularly.

Q. Did he talk to you much?

A. Not much. At times he seemed to rest a great deal, and he said he felt better than he had for some time. He said he was resting very quietly.

Q. You remarked that he was engaged at that time in contracting for building of the house?

A. Yes, sir.

Q. Was there any one there, during the time you were there, to discuss that matter, or that came about there on business with him?

A. Yes, sir; there was.

Q. Were you present at any of the interviews?

A. Not only as I would pass in and out. I always left when any one came.

Q. How did he seem to be in regard to that?

A. Very exacting.

Q. Was he conducting the business with his agent?

A. He seemed to be; yes, sir; but said he was in hopes to get out of it soon, and rest. Therefore I looked for better times, instead of worse.

Q. Do you know of his transacting any business during the time that you were there?

A. I do not, sir; nothing particular.

Q. Did you know of his writing any letters?

A. I gave him—I think he wrote once to his wife; I gave him the pen and ink once—once in a while I would write a little for him, an order for something, and he always wished me particularly to have me say “Hon. Horace Hawes.”

Q. Did you read the orders over to him after you had written them?

A. Always.

Q. Did he ever correct any of them in any particular?

A. I think as a general rule—I think he said that is right. He had told me plainly before I wrote them.

Q. He gave you full instructions then, in all cases before you wrote orders or letters?

A. Yes, sir.

Q. After you had written them he examined them carefully and pronounced them correct?

A. I would read them over to him, and he would say: “go ahead.”

Q. Do you recollect what any of these orders were for, or to whom they were addressed?

A. I don't remember, with the exception of sending for a bottle of wine; I don't remember. There would be little orders that were sent by the boys.

Q. Do you remember of his drawing any checks while you were there?

A. I do not, sir.

Q. Do you know of his drawing up any papers of any kind or character, farther than you have already stated?

A. I don't, sir.

Q. What was his condition ordinarily, at times when no mention was made of his family affairs, or his wife?

A. He varied; rules that he would make for me to go by to-day, the next day were of no account, and then he would get exasperated, and say he might as well take care of himself, and that I didn't know anything; didn't understand.

Q. But during all that time he was very precise and exacting in the transaction of all his business?

A. Well, yes; but his mind changed so from one day to another that one would hardly know what to do; that was what convinced me?

Q. State to the jury some one instance of those changes?

A. Well, I don't know that I can call up anything now; I could probably by thinking, but I cannot think of any one thing. It was in everything that I would do for him, he was continually changing.

Q. During the first three days you were there, while he talked so beautifully, and you thought he was a Christian gentleman, he was generally very calm and quiet, wasn't he?

A. Yes, sir, so I thought. He always wanted me to be sure to have the crucifix under his head. I tried to arrive at the point whether he was a Catholic or Protestant.

Q. Did you ascertain?

A. I did not.

Q. Did his condition in that respect, for those three days, continue very much the same, except when you talked about his wife?

A. No, sir, he was worse the next day. I didn't talk to him about his wife after that first conversation.

Q. What occurred the next day? What occurred on the fourth day?

A. I don't know of anything particular, except the general routine of being with a person in a sick room, giving him his food.

Q. What do you mean by saying he was worse after that?

A. Irritable and cross.

Q. He still seemed to understand everything he was doing?

A. Yes, sir, with the exception of excitement.

Q. What occurred on the fifth day, if anything, particular?

A. I could not tell you any more than I could on the fourth, nothing special; it was only general.

Q. All you mean to say is, that he was generally irritable, changeable, and fickle?

A. Very.

Q. Difficult to get along with, and that when opposed or resisted, he became very passionate?

A. Yes, sir.

Q. Doesn't that express about the whole matter?

A. Yes, sir.

Q. Do you recollect the name of the gentleman who was there, in regard to the building of his house at Redwood City?

A. I could not tell you his name, although I have seen him present here.

Q. Was he there more than once during your stay there?

A. Yes, sir, he was there a number of times.

Q. He was there a number of times, on different days?

A. Yes, sir.

Q. Did he, on each of those days, have interviews with Mr. Hawes?

A. Yes, sir, he was always admitted.

Q. Was any one else present during these interviews?

A. I could not tell you, generally there was only the person—one at a time.

Q. He treated you then with a great deal of kindness and attention, and with egg-nogg also, until you mentioned the name of his wife; was that so, Mrs. Blanchard?

A. Yes, sir.

Q. After that did he continue to treat you in about the same way, except that he required more manual service of you?

A. Well, the first thing he did the next morning was to discharge my servant. She went in to see him and came out crying, and she said that he didn't want her, and had discharged her; and that brought a great deal upon me.

Q. Did he assign any reason for discharging the servant?

A. He said she could not cook to suit him, and he would not have her around the house.

Q. Then you had to perform the duties which that servant had been performing before?

A. Yes, sir.

Q. Were there any other servants in the house?

A. No, sir; except the two office boys.

Q. Except two office boys ?

A. They were to assist about the fires; and I then had to build the fires and do other things.

Q. Did he employ or procure other servants during your stay there ?

A. No, sir, he did not. There was a number came there but there was not any of them that would remain. They would come out and say that he had not engaged them.

Q. Did you ever have any conversation with him on the subject of religion, during your stay there ?

A. Well, nothing very satisfactory.

Q. Did you converse with him on that subject ?

A. Yes, sir; the same as I would with any sick person that I thought near the approach of death.

Q. Did he talk reasonably upon that subject ?

A. Well, sometimes he would not be disposed to say any thing, and of course I would not annoy a sick person with talking with them anyway.

Q. Did he ever say anything which you considered unreasonable, on that subject ?

A. Yes, sir, I think he did. One time he swore and cursed the ministers, and the next time he would swear and curse the Roman Catholics, and he would tell me if Bishop Alemany and the Sisters came not to admit them. And the Sisters came to see him, and he would not admit them, but he admitted Bishop Alemany.

Q. Did you consider that evidence of insanity ?

A. I considered him changeable all through, very unlike any person I had ever met. He had a wild, unnatural look about his eyes at times.

Q. You say that he always became very excited when mention was made of his wife; did he also become excited when discussing religious matters ?

A. Well, I didn't talk with him on it; when he would rest, I was always disposed to let him rest, and glad of it.

Q. He rested the most of the time, didn't he ?

A. He rested very well nights, but I don't think he ever slept in the daytime.

Q. What portion of the time did he rest quietly during the day, when not asleep ?

A. Well, he had company most of the time through the day. The larger part of the time he had company during the day, at that time.

Q. Did you know any of the persons who called on him ?

A. Yes, sir.

Q. Who were they ?

A. Dr. Stebbins, the Rev. Mr. Lathrop, Mr. Hall, Washington Bartlett—well, a number of others—I don't know their names.

Q. Were you ever present during any of the interviews with these persons ?

A. No, sir; I always withdrew, unless he struck his bell for me; if he wanted me, he would strike his bell.

Q. What was his custom in regard to lights burning in the room ?

A. The gas used to burn lowly—a little, very little.

Q. All night ?

A. Yes, sir.

Q. By his direction?

A. Yes, sir; and sometimes he would want it quite light, and then again he would want it almost total darkness. He varied.

Q. Was Mrs. Hawes there when you first went there?

A. She was not, sir. She was there when I first went to see him about making an engagement, but it was nearly a week after that before I went to remain.

Q. When you went to remain, was she there?

A. She was not.

Q. When did she first make her appearance?

A. After I told him that I could not stay any longer, and he told me not to stay, he either telegraphed or sent for her by letter, and she came immediately.

Q. She came, then, on the same day on which you went away from there?

A. Yes, sir.

Q. You have been about sick-rooms considerably, have you not?

A. Yes, sir; I have been familiar with them all my life.

Q. Is there anything unusual in the fact of keeping lights burning lowly, or not, in the sick-room?

A. I didn't consider that unusual; no, sir.

Q. Is there anything peculiar about the lights there? Were they the ordinary gas lights?

A. Yes, sir; they had no peculiarity in that respect.

Q. Did you see Mrs. Hawes in the presence of her husband at all while you were there?

A. I did, when she first came.

Q. How did they meet? Was Mr. Hawes in the house at the time?

A. Very pleasantly—he was in bed.

Q. She went into his room, did she?

A. Yes, sir.

Q. You were there at the time?

A. Yes, sir.

Q. What transpired between them while you were there?

A. She went up and spoke to him very kindly.

Q. Did he make any response at the time, at all?

A. I don't think he did.

Q. Did he look at her?

A. I could not tell you, sir.

Q. You don't know whether he looked at her or not?

A. I think that he did not; I don't think he moved.

Q. Did he speak at all, while you were there?

A. I did not hear him.

Q. How long did you remain after Mrs. Hawes came in?

A. She came in—I think I went away in the afternoon, and she came in the afternoon, as near as I can remember.

Q. Aside from being nervous, irritable and cross, don't you believe Mr. Hawes was just as rational on every subject except his wife, as people ordinarily are?

A. Well, I think people ordinarily are not as changeable and fickle as Mr. Hawes. They make a will one day and that will serve them for the next, if they have reason.

Q. Then it is from that fact that you reached the conclusion that he had lost his senses?

A. In a measure I think at times he scarcely knew what he was about.

Q. What I want to get at is what brought you to that conclusion? Have you stated in the course of your examination, direct and cross, all of the facts and circumstances upon which your conclusion is based?

A. I think I have, sir.

Q. Have you ever made a study of insanity?

A. I never have sir.

Q. You never have practiced medicine?

A. No, sir.

Q. Have you ever nursed or waited upon any other sick person suffering from the same disease?

A. I have never waited upon a sick gentleman before; with the exception of a cousin of mine at home.

Q. What was his disease?

A. He was crazy.

Q. Mr. Hawes, then, is the only sick gentleman, except this insane person, that you ever waited upon?

A. Yes, sir; I have devoted my life to women—sick ladies, since I have been in San Francisco, and for ten months I was matron of the San Francisco Female Hospital; consequently I know very little of men.

Q. Did you ever wait upon or nurse a sick woman whose disease was chronic consumption?

A. I have, sir; some very trying cases.

Q. Did you observe, and have you observed in those cases particularly the effect of the disease upon the nervous system?

A. Yes, sir.

Q. What is the general effect?

A. Very nervous; irritable.

Q. Extremely sensitive, are they not, about changes of heat, and cold, and damp, etc.?

A. Yes, sir.

Q. There was nothing, then, in the case of Mr. Hawes, in that respect, different from an ordinary case?

A. Entirely different.

Q. Now, just explain to the jury wherein that difference consisted.

A. Well, I never saw a person but what I could please them, satisfy them—do everything as they requested me to, and overcome their little nervous irritability.

Q. What you mean to say is that Mr. Hawes was more nervous and difficult to please than any other person you ever attended?

A. Yes, sir.

Q. You stated in your direct examination that he had no personal decency or modesty about him. State to the jury what he did, what he said, upon which you based that opinion or conclusion. I ask you what he said or did, from which you draw the conclusion that he had no personal modesty or decency?

A. The manner that he spoke to me.

Q. His language?

A. Yes, sir.

Q. Was it profane?

A. Yes, sir.

Q. To what extent?



A. Well, I could not utter the oaths that I have heard him utter; neither could I remember them to swear they were just as he uttered them. But I know they were shocking to me, for I had never heard anything of the kind.

Q. Was that often?

A. Yes, sir; very often.

Q. On what occasions would he make use of profanity?

A. Oh, well, on different occasions.

Q. Well, state one of them. What was the occasion of his being profane to you the first time he was profane?

A. It was continual profanity for the smallest thing.

Q. It had a beginning somewhere.

A. It had a beginning, but no end.

Q. What had you done that made him swear at you the first time?

A. I could not tell you any more, sir.

Q. Can you state in any instance, what you have done or said, which made him swear at you?

A. I could not; nothing more than what I was doing in any other sick room, where it would be acceptable to people, but it would not be so to him.

Q. Was his language also vulgar and obscene?

A. It was at times. His very manner of speaking was indelicate; at least, I considered it so; another might not.

Q. That is what you mean then by saying that he was personally indecent?

A. Yes, sir, and the manner he ordered me to do things.

Q. Did you, during your stay there, hear him using profane or vulgar language, to any one else?

A. There was not generally any one else in the room when I was there; he never would have but one there at a time.

Q. In speaking of any one else then?

A. Yes, sir, very often. He was always swearing about somebody; he seemed to think every one was doing wrong—there didn't any one know anything about him.

Q. He was abusive then, indiscriminately, was he of most everybody of whom he spoke?

A. Well, he was a great deal more irritable in regard to some than he was to others.

Q. Wasn't he generally abusive of almost everybody, with whom he had anything to do?

A. I don't think he thought well of the world at large.

Q. Did you, during your stay there, hear him speak well of any person?

A. Well, I cannot think of any one. I heard him show the most affection for his little girl when she came there.

Q. Did he seem to be attached to her?

A. He did.

Q. Did he ever speak of her to you?

A. I don't remember that he did. I didn't know that he had so young a child, until she came there.

Q. Did he ever speak to you of his son?

A. Yes, sir.

Q. Did he manifest any tenderness or affection for his son?

A. He told me what he had done with him, that he had sent him away, and was educating him. The little girl related to me—she said when he was getting ready to go, she wanted me to arrange something on her neck; and I was doing something at the time. She said, “I want you to do it quick; I am just like papa, only not near as cross.” She seemed to be aware that her father was very cross.

Q. How many vials, or bottles, or packages of medicine were there altogether in the room, that you had to label and arrange?

A. I should think from twelve to twenty, wine and medicine.

Q. You put new labels on all of them, did you?

A. Yes, sir.

Q. Do you know whether any of them were poison or not?

A. I do not. I never heard anything about it.

Q. A large proportion were different medicines, were they?

A. Yes, sir, medicines, wines, and jellies.

Q. Did he require you to put a new label on each?

A. Yes, sir.

Q. And then he required you to exhibit it to him?

A. Yes, sir.

Q. And he read them labeled?

A. Yes, sir.

Q. When he said to you that he feared you might do something that would put him out of existence, did you understand that he thought you would do so intentionally?

A. I didn't understand any more than to interpret a good deal else that he said.

Q. Didn't he say to you that he was afraid you might make a mistake?

A. He didn't say mistake.

Q. When did he make this remark? Was it at the same time, or about the same time that he ordered you to label all these medicines anew?

A. No, sir, it was two or three days after.

Q. Now, can you give the exact expression that he made use of, as near as possible?

A. At that time?

Q. Yes, sir.

A. Well, he raised up in bed, and he looked very much exhausted, and he says, “I fear any moment, that you may do something or other to put me out of existence any moment,” and he threw his arms around, and I had not done anything.

Q. Did you make any response to that—any reply?

A. I did not. I never dared to make reply to him.

Q. Did he say anything more about that?

A. He did not.

Q. How long was that after you had been giving him medicine?

A. It was, I should think, five or six days.

Q. Five or six days after you had given him any medicine?

A. Yes, sir; on the occasion I gave him medicine, when I first went there, he said nothing about labeling the bottles.

Q. What I meant to get at is, how long before that was it when you gave him the last dose that you had given him?

A. I gave him the first during the day.

Q. How many times a day?

A. He varied about that. Sometimes he would want one kind of medicine, and sometimes another. He seemed to be his own physician.

Q. Had not you, as a matter of fact, just given him a dose of medicine?

A. No, sir.

Q. How long before had you?

A. I don't know that I had given him any that day.

Q. You were about to give him a dose of medicine?

A. No, sir; I was not.

Q. What were you doing at the time?

A. I went to step back to get something to take out of the room, and he asked me what I was about.

Q. You told him, and then he made that reply?

A. No, I didn't tell him; I didn't say anything. I knew enough not to give him a reply. He had told me long before not to give any reason, and when he talked to me not to give a reply.

Q. Now, is there anything else; was there anything occurred there, Mrs. Blanchard, more than you have stated which led you to believe that he had lost his senses?

A. I don't know of anything. I think you have been through with all that routine.

MR. BARNES—The counsel has asked you several questions to the effect that all you observed about him, and saw about him, gave you an impression as to his mental condition; that he was generally irritable and improper in his language. Now, you speak in your direct examination of want of personal modesty. I ask you if that want of personal modesty was wholly confined to language?

A. It was not.

Q. When you spoke of that, you referred to his actions, did you?

A. Yes, sir.

Q. Did that conduct to which you allude have any influence in leading you to the formation of the opinion you have expressed that he was not in his right mind?

A. It was very unlike what I should suppose any man in his right mind would do.

MR. PRATT—Q. Was that anything more than what you would call an improper and indecent exposure of his person?

A. No, sir.

Q. That was all?

A. I think that is enough.

Q. Is that unusual among people who are very sick?

A. I never have been in a position of the kind before.

Q. You never saw anything of the kind before?

A. I never have been with a sick gentleman. Some women think that all men are crazy. I should come to that conclusion myself if they were all like him.

MRS. MARY E. OVERTON called for Contestants. Sworn.

Examined by MR. BARNES—Q. How long have you resided in this State?

A. Eighteen years, sir.

Q. Where, principally?

A. Twelve years in Nevada City, the remaining years in Napa and Sonoma.

Q. Are you married?

A. I am a widow, sir; the widow of the late Dr. Overton.

Q. Did you know Horace Hawes in his lifetime?

A. I have known him for eight years.

Q. Did you know Mrs. Hawes?

A. I have known Mrs. Hawes for thirty years.

Q. At home and here?

A. I knew her in Kentucky; we are both residents of Kentucky; we came to this country together in the year 1853, and have been together ever since.

Q. Did you know Dr. Caldwell's family?

A. Very well, we came to this country together.

Q. Did you know Carrie Caldwell?

A. I knew her, sir, when she was an infant of four months.

Q. Do you know whose child she was?

A. She was the daughter of Dr. Caldwell and Mrs. Mary Caldwell.

Q. How often, if at all, did you visit Mr. Hawes during his last illness?

A. I was with Mr. Hawes four months, upon an average of three to four weeks during four months. I believe, during that time, he might have been a week, or perhaps ten days at his farm in Redwood City. I am sure, on an average of three times a week.

Q. Between what dates was that, Madam?

A. From the first of September until the first of January, previous to his death.

Q. During those visits did you have any conversation with him—much conversation with him?

A. Yes, sir; I had; I believe he looked upon me as one of his particular friends. I did not prove so, though.

Q. What were your principal topics of conversation?

A. Oh, well, sir, it seems to me he talked about everything, but particularly his unhappiness, his wife, his great name, and his children, and everything that a man could talk about that was unreasonable.

Q. Do you remember the first time you went there to see him, what his condition was as to health?

A. Yes, sir.

Q. How was it?

A. Well, he was in a very feeble condition, apparently, to me.

Q. Sick in bed?

A. Yes, sir; confined to his bed.

Q. Did you see his wife there?

A. She was not.

Q. Did you say anything to him about her absence?

A. I did; when I found him in this condition, and said, "Where is Mrs. Hawes?"

Q. Let me ask you at this time, who was there taking care of him, if anybody?

A. A nurse by the name of Ann Douglas, who has already given testimony.

Q. No members of the family?

A. No, sir.

Q. What did you say to him about Mrs. Hawes?

A. I asked why Mrs. Hawes was not there.

Q. What did he say?

A. Because he did not desire her there, that she would be the death of him if she were there. Remember I had not seen Mr. Hawes for such a length of time. that I was, of course, very much surprised not to find Mrs. Hawes there.

Q. So you asked him—

A. And he said he did not desire her presence; that she would have been the death of him if she were there, and that he kept her from him as much as possible.

Q. What particular ground of complaint did he have against her, if any?

A. Well, at that visit, sir, he did not specify any particular ground of complaint, only that general feeling of dislike and hatred for her; that her presence was disagreeable.

Q. Describe the feeling that he manifested towards her, the temper manifested when he made this remark about her.

A. Well, I do not know that there was anything particular about it, any more than I saw that he had a very intense hatred of her. I do not know that there was anything remarkably peculiar, any more than it surprised me to find that he had such feeling at that time; I had known what his cause of feeling had been before, but not so intense as this.

Q. Did he say anything to you in relation to his having food at that time?

A. Yes, sir, I found him in a starving condition, from his account.

Q. What did you find there in the way of food, if anything?

A. Well, there seemed to be all that was necessary for a man in his feeble condition, such as sago, rice, and other things, broth and other things, that I supposed the nurse had been preparing for him, but when he met me he told me he was lying there, literally starving to death. I offered to get him some food, and I did. I went to the California Market, and found it closed, and not knowing the customs of the city market, I went to a restaurant and inquired, and they told me to go in the back way of the market, and I could get him something, and I did, and bought him a quail and chicken, and took them home and cooked it, and he was not afraid it would poison him, and he took a little at any rate, but to his own ideas, he was certainly in a starving condition, with plenty around him.

Q. Did he appear to be sincere in that belief?

A. I think he did, sir. He must have been, for he told me that every time I saw him.

Q. And with every apparent conviction that what he was telling was true?

A. He did, sir.

Q. Did he ever say to you, in relation to his wife's truth—I mean in point of telling the truth, not her fidelity to him, but as to her being a truthful woman or not?

A. Every visit I made him, he told me that she was a thief and a liar, except the last visit, and then he was too feeble to say anything.

Q. Did he say anything in the nature of a caution to you respecting her?

A. Well, he proposed to me to come and stay with him and nurse him; that Mrs. Hawes, having known me so long, knew that I was a good nurse, and cook, etc.; and I then told him I thought perhaps I might, if I could make the necessary arrangements; but, again, he

said it would be a dangerous thing for you to come, for she would injure your reputation.

Q. What did you say to that?

A. Well, sir, I had known Mrs. Hawes longer than him, and I could not be made to believe anything of the kind. More than that, a woman's reputation could not be injured by a man with one foot in the grave.

Q. How much of the time that you were there did you occupy talking in this strain?

A. I usually saw him from two o'clock until about five or six in the evening. Sometimes I sat up with him; sometimes I was with him until the eleven o'clock boat for Oakland. I was then living at Oakland.

Q. Did he talk to you about those benevolent foundations of his?

A. Yes, sir; he did.

Q. Did he talk with you about these? Let's take the first one first—the Chamber of Industry.

A. I have the honor, sir, to tell you that he said I suggested it to him—the idea of the Chamber of Industry.

Q. On what account?

A. On account of my great industry and perseverance. His object was to keep me persevering all the days of my life.

Q. Did he propose to do anything for you in that Institution?

A. Nothing, sir; only that I should have a room set apart for my continued industry, and he offered me some honor.

Q. Did he give you any description or account of what he was going to do with that building with regard to himself?

A. Well, he only told me that it was going to be a magnificent building. I do not remember the location of it; but it was to be a magnificent edifice; that people should come from all quarters of the globe; that there was to be one room set apart for Mrs. Overton and her industry, and that at the entrance should be written the name of the donor, the Honorable Horace Hawes, and underneath should be written, "Suggested by Mrs. Overton;" and I told him I would rather have something just now a little more real, as I needed it.

Q. What did he say about himself with reference to his personal greatness?

A. Sir, he said no man ever lived who was as great as the Honorable Horace Hawes. He told me that at least twenty times over. He remarked that his name should live through future generations. That no man ever lived that had done good or could do good equal to Horace Hawes. That is about the substance of it.

Q. Did he ever, in these conversations, make you any promise of future reward as well as personal reward, relative to settling the trouble with his wife?

A. Well, he told me he thought I had more influence with "that woman" than any one else, having known her so long—that if I would persuade her to have a divorce he would give me twenty thousand dollars, and that he would give any one twenty thousand dollars to marry her; that he would make me the richest woman in California.

Q. Did he express any views to you with respect to his little daughter?

A. Not at that time.

Q. In regard to what he was going to do with her?

A. The visit before the last that I saw him, he told me that he was very anxious to send his daughter to Europe with his son. Indeed he



said he was very anxious to send his wife to Africa at the same time. I proposed that he should send us both, his wife and I, to Europe; that we would enjoy the trip; but he could not see the point there. He said he would send his wife anywhere in the world so that he could get rid of her, but the child he would send to Europe to have educated with his son. At the same time Mrs. Hawes was standing by, and said, smilingly, "I won't leave you as long as there is breath in your body." At the same time he looked at me and said "Mrs. Overton, she loves the name of the Honorable Horace Hawes."

Q. Did he express any views in regard to his son Horace?

A. Yes, sir; at all times he said there was no young man in America that would be so well educated as Horace; that he had advantages—that indeed, no child ever born had a mind equal to his son Horace.

Q. Did he say what sort of man he was going to make?

A. Well, the greatest, of course; that was his idea.

Q. Did he give you any instructions while you were there, with reference to priests or clergymen who should call upon him? If he did, state it?

A. I called upon him one afternoon, sent in my name as usual, and was admitted into the parlor; Mr. Hawes was sitting in bed; there was a Catholic priest sitting by his side; and the priest stayed rather long, and upon his leaving, I went in to see Mr. Hawes; he seemed rather indignant, and said he hoped no Catholic priest would come to see him again, and if he did that he should not be admitted unless he had something for a starving man to eat; a cup of tea, or a hot potatoe—that a Catholic priest and no one else should be admitted without he brought a starving man something to eat.

Q. Did he say when they ought to bring it?

A. Why, every time they came.

Q. How often did he speak of that?

A. Every time I went to see him but the last time, he spoke of something to eat, or of his starving condition. He stated nothing to me about Catholic priests after that.

Q. In speaking of his starving condition, did he appear to believe what he said?

A. Of course he did, and did not talk anything but what he believed in.

Q. In all his declarations then, you believe he was sincere in his own mind?

A. Sir, I know he was.

Q. If there was anything about a future state said to you, and about his own salvation, state it.

A. Well, he said he knew if there was a hereafter, that a man that had done the great acts and the good acts that he had done would be saved from those acts—would be saved by those acts.

Q. You have spoken of the language he used with respect to his wife—let me ask you if during any of these interviews you have spoken of, he said anything further with respect to her than that you have stated.

A. He always told me that Mrs. Hawes had proved unfaithful to him; that he thought he loved her when he married her, but he found that he was mistaken; that she had proved to be a thief and a liar, and a very deceitful woman; that she was a woman in whom there was no



truth; that she never spoke the truth; that during his absence she had broken into his house and gone into an upper room where he had some elegant furniture stored away and took the furniture out and sold it; and he said hadn't she done it, Mrs. Overton. you should have had it to furnish your house in Oakland. He said that she had gone and broken into his barn in Redwood City, and stole his grain, and many other such things.

Q. Did he ever talk about her fitness for society, or anything like that?

A. Yes; he told me she was not a fit associate for a true woman, or a true lady, and that had she been he would have taken her into good society here, and also in New York, among his friends there; but he was ashamed of her; and had she conducted herself properly she could have lived in the finest establishment in California.

Q. During all this time he was speaking of her and going on in this strain about himself and his wife, what was his manner and appearance as to being excited or not?

A. Well, he was so much so—very much excited; some of the time very much indeed; because I know I had not been in the habit of seeing Mr. Hawes in that condition, and I scarcely knew what to judge of the man; but I always found him very much excited indeed, on account of the intense hatred that he had of Mrs. Hawes.

Q. Mrs. Overton, during the time you have known Mrs. Hawes, here and elsewhere, in her intercourse in society, and with him, as far as you know, was there any fact or circumstance, of any nature or description, which could furnish the slightest foundation for his antipathies, prejudice, and hatred which he entertained towards her? If there was any, please state it?

A. I cannot say, sir, that there was the least thing. If a woman who has suffered such wrongs and martyrdom for a series of years, as Mrs. Hawes did, and with such patience, without rebelling, knowing that these wrongs came from one who should have given her his strength and protection—such, sir, in my opinion, is a sufficient proof to the world that Mrs. Hawes was a true wife and mother.

Q. Did you ever know anything in her life, character, or career that should afford the slightest foundation for his hatred toward her—any conduct which merited it?

A. Never, sir.

Q. Or in her reputation?

A. Never, sir; I have known her all our lives—never.

Q. From all you saw or observed of Mr. Hawes, did you form any opinion with reference to his soundness of mind?

A. I did, sir.

Q. What was that opinion?

A. Why, that he was insane; nothing more nor less.

*Cross-Examination by MR. PRATT*—Q. When did you first arrive at the conclusion that Mr. Hawes was not in his right mind?

A. Sir, I have always had that opinion ever since I first met him, which was eight years ago, that he was somewhat insane, sir.

Q. You thought him insane eight years ago?

A. I thought, sir, he was somewhat insane—not so much as he was in later years.

Q. Be kind enough to explain to us what you mean by insane.

A. Bereft of reason.

Q. You regarded Mr. Hawes eight years ago as a man bereft of reason?

A. I told you, sir, I regarded him as somewhat insane. Now, if you will go on and ask me in the right way—remember, Judge, I am somewhat dull of apprehension, and you must speak in plain terms, if you please.

Q. Eight years ago, you regarded him as somewhat insane?

A. I did.

Q. And somewhat bereft of reason?

A. In a great measure.

Q. Then, eight years ago, you thought that he was somewhat bereft of reason?

A. Yes, sir.

Q. That is what you mean by insane?

A. Yes, sir.

Q. To what extent at this particular time had that malady grown upon him?

A. To a great extent. I think he was almost entirely insane at that time.

Q. You mean by that, that at this time he was almost entirely bereft of reason?

A. Yes, sir.

Q. Now, are there any other facts and circumstances than those you have already stated which led you to the conclusion that Mr. Hawes was almost entirely bereft of reason the last time you saw him? Have you stated everything on which you based that reason?

A. No, sir; I have not.

Q. Give us the balance—what other circumstances and facts?

A. Well, sir, if a man publishes his wife's infidelity to the world, as he did, and perseveres in that when there is sufficient proof to any sane man's mind that he was laboring under delusion—that, to my mind, is one convincing argument of his unsoundness of mind, or insanity.

Q. What do you mean by publishing to the world his wife's infidelity? How did he do it? How did he publish it to the world?

A. I think employing detectives is sufficiently doing it.

Q. Did you know he had employed detectives?

A. He had them on her track; I know he had one.

Q. Did you know it at the time?

A. During the four months I was with him, I did not hear him say so, but I heard it from others, that he had employed detectives.

Q. Who told you that?

A. I do not remember; I heard so many friends speak of his conduct, that I do not remember any particular one.

Q. The same friends told you that he had a detective on her track?

A. Well, Judge, I did not know at the time that he was a public officer, but he had a person to watch her in regard to her character.

Q. That is what you mean of publishing to the world—the fact that he was trying to satisfy himself in regard to whether she was unfaithful to him or not?

A. Well, what I mean by publishing is, not only the public authorities, but every person that he came in contact with; he was trying to impress upon every one's mind that she was unfaithful to him.

Q. How did you ascertain that?

A. Because my friends there all told me; he told me in the first place that she was unfaithful to him.

Q. Who was the first one that told you that he was—told them she was unfaithful to him?

A. Well, the particular one is now in New York city, Mrs. Armes, of Oakland.

Q. Any one else?

A. Not particularly. I do not know any one in particular, though I have heard many speak of it.

Q. You went there as a friend, both of Mr. and Mrs. Hawes?

A. I did, sir.

Q. You had known Mrs. Hawes for thirty years?

A. Yes, sir.

Q. You felt a deep interest in Mrs. Hawes' welfare?

A. Yes, sir, and just as deep an interest in Mr. Hawes at the time.

Q. Was it not a part of your business, and your object in going there, if you could, to bring about a reconciliation, and prevent Mr. Hawes from disinheriting his wife?

A. Why, no; the idea!

Q. You had no such object in view?

A. The first time I went to visit Mrs. Hawes.

Q. The first or the second time, during the three or four months that you were there?

A. Sir, I never went there with that object in particular. I felt it my duty, as a friend of Mrs. Hawes, that if I could, by any word, or anything I could do, bring about reconciliation between a man and his wife, I was willing to do it.

Q. Did you talk with him on that subject?

A. Very little, sir, did I talk with him on the subject; he would never allow me to talk about it.

Q. You say he seemed to regard you as one of his best friends?

A. When I first went there, indeed he told me I was the only one he had found that had a heart.

Q. You went there as a friend of Mr. Hawes and his wife also, and you state that Mr. Hawes regarded you as one of his best friends. Do you consider it an evidence of insanity on his part, under those circumstances, if believing his wife to be unfaithful, he should tell you of it?

A. No, sir; I do not think that that was any evidence of his insanity; but I think his insanity was the cause of his telling me.

Q. You do not think that publishing it to the world is an evidence of insanity?

A. Judge, I am not the world; I did not consider at that time that I was the world.

Q. You did not consider it any evidence of insanity, his telling you about that?

A. No, sir; I did not.

Q. He thought he had reason to doubt her fidelity; now would you consider it evidence of insanity, under those circumstances, for him to employ a detective, or anybody else, to aid him in ascertaining the truth?

A. Sir; I believe if a man believes his wife is unfaithful to him, and he has convincing proof that she is not, and then still persists in it, then I say he is unreasonable.

Q. Suppose he had a very strong suspicion, without any tangible evidence at all, and in consequence of that he employed a detective to ascertain the fact, would you consider that evidence of insanity?

A. Sir, a sound man would not have such suspicions, unless he had very great cause.

Q. You consider a man unsound in mind if he has such suspicions?

A. Yes; I should think he would be, or ought to be; at any rate, it ought to be charitable to say that; otherwise he is a demon.

Q. Then the fact which you have already stated, and the additional fact that he had employed somebody to ascertain or assist him in ascertaining whether his wife was true or false, constitute the only reasons which you have for supposing that he was bereft of reason?

A. Sir; when a man acts so contrary to the ordinary conduct and character of men, I think he must be of unsound mind.

Q. Was there anything else in his conduct?

A. Why, it seems to me, or I have thought of it, in every act of his life there was a touch of insanity.

Q. Ever since you knew him?

A. Ever since I knew him.

Q. You think he was insane on every subject?

A. More or less.

Q. Now, don't you fully concur with a very learned author on the subject of insanity, that no man is entirely sane?

A. That may be, sir; even insane persons are rational on some subjects, for a time, at least.

Q. Do you believe there is any such thing as an entirely sound mind?

A. Judge, I think that is a pretty hard question for me to answer, particularly when I am a widow, and there are so many gentlemen in the room.

Q. I think that answer is pretty good evidence that there is one woman, at least, not insane on the subject of men. Now, Mrs. Overton, you have stated pretty decidedly your belief that Mr. Hawes was insane generally?

A. Generally insane, I have, sir.

Q. And those facts and circumstances on which you have based that opinion you have stated to the jury?

A. Well, sir, he was a miser. I have always believed that misers were insane. You must remember that I am not learned at all; I have not studied the subject of insanity.

Q. We have not come to that yet; this is only introductory. You believe then, that all misers are insane?

A. I do believe so.

Q. Are you very much acquainted with Michael Reese?

A. Not at all, sir.

Q. You know him by reputation?

A. Yes, sir.

Q. Do you know that he has the reputation of being tolerably penurious?

A. I do, sir.

Q. Do you consider him insane?

A. On that ground, yes.

Q. You would consider all men who manifested that temperament of disposition, to be insane?

A. Yes, sir, on that subject.

Q. If that is your idea of insanity, I do not care to pursue the subject further.

A. I hope you are satisfied, Judge.

MARY TIMMIMS, called for Contestant. Sworn.

*Examined by MR. BARNES.*—Q. Did you know Mr. Hawes in his lifetime?

A. I did, sir.

Q. About what time did you get acquainted with him?

A. The first day of January, in this year, sir.

Q. Where was he?

A. He was in Folsom street at his residence, where he died.

Q. How did you come to go there?

A. He called on the Sisters of Charity, for a first-class cook.

Q. Did they send you?

A. Yes, sir,

Q. How long did you remain there?

A. I think I was there about eleven days, sir, as near as I can remember.

Q. When you went there, whom did you see, and who assigned you your duties?

A. I met a lady, a Mrs. Coffin; she was a stranger to me; she was the only person in the building at the time.

Q. That is one of the ladies that have testified here?

A. Yes, sir.

Q. Was his wife there?

A. No, sir.

Q. During the time you were there, did Mr. Hawes converse with you about his wife?

A. Not at all, sir.

Q. Did you see Mrs. Hawes there at all?

A. I did, sir.

Q. How soon after you went there?

A. I think it was several days after I went there, that Mrs. Hawes came in one evening.

Q. Were you present in Mr. Hawes' room, when she came there?

A. I was.

Q. What did he say to her?

A. She went forward, and spoke as a wife should. He asked what had brought her there. She said, "I came up to see you, my dear." He said, "Did you not know I am never so well in your presence as in your absence." He says, pointing to a carpet bag lying on the floor, "What is that?" Says she, "That is some clothes I have brought you." "Brought me? take it away, you can't stay here." She says, "Who has a better right than your wife?" He says, "You have no right, you cannot stay here; take that away." So he compelled her to leave the house, and go elsewhere to sleep.

Q. What time of night was that?

A. I think about between five or six o'clock in the evening, when she arrived, as near as I can remember.

Q. Was it daylight, or dark, or nearly dark?

A. Well, it was the month of January; I should suppose it was nearly dark.

Q. He would not allow her to stay in the house?

A. No, sir.

Q. Did she go away?

A. She did, sir.

Q. When he did that way, and told her she should not stay in the house over night, what did she say, if anything?

A. I did not hear her make any reply, as I was passing back and forth from the kitchen to the bed-room. I did not know at the time it was his wife, and I was very much confused to hear him so enraged at her arrival. I never knew or saw her before.

Q. Besides the language used, what was his tone and look?

A. Well, he appeared very much excited, and the wildness of his eyes made me think he must be an insane man, or could not express himself to his wife in such a manner.

Q. Was there anything in her manner or language calculated to excite him?

A. Not at all. She was very mild and calm, and did not answer him to what he said.

Q. She came back?

A. She did.

Q. When?

A. The next day.

Q. Did she come into his room?

A. Yes, sir.

Q. Who was present when she came in there?

A. I was in the room, and a lady I believe, named Mrs. Potter, who was a stranger to me. I don't know of anybody else, except the office boys, that was in the building.

Q. When she came in the next morning, how did he accost her, if at all?

A. She bid him good morning, and asked him how he was. He answered her calmly, and said he was better; and I was holding a basin, and washing his hands, and he says, "Mary, you may give this woman a bite once in a while, for I believe I like her, after all."

Q. What instructions did he give you about money?

A. He did not give any at that present time; he dismissed me, and I got his breakfast. I don't know what passed between him and her at that present moment.

Q. Go on and state what happened between you and her during the time you remained there.

A. I think afterwards she came another time to attend a funeral, as near as I can remember, and she had very old shoes on, and he would not give her a dollar to get shoes with. She asked him for fare on the railroad, and he would not give money to pay her fare. She was obliged to attend the funeral of—I disremember,—a gentleman's son that was shot at the time.

Q. Mr. Ebbetts?

A. I think so; so I sympathized with her at the time.

Q. Did you hear her ask for money?

A. I have not; but I overheard him as I entered the room saying, "You shall not have a dime." He says to me, "The money belongs to you, and not to that woman."

Q. How was his mind at that time?

A. It seemed to me wild and furious, kind of wandering, and his eyes glittering, and it gave me to think still further that he was an insane man.



Q. What instructions; if any, did he give you with respect to his medicines and the things he kept about him for his own personal use?

A. Mrs. Hawes arrived that day, I believe it was on that day, and Mrs. Potter too, as I remember a lady that came to see him to offer her services as a regular nurse, and in the evening, towards dark, he called me and asked me to learn from his wife how to give him his medicines. As he had no regular nurse and I stood by her side, and noticed as she dropped the medicine from the bottle, and he told me to take particular notice how she gave it to him, and to give it to him in the same manner.

Q. Did he give you any instructions or require anything of you, with respect to doing the work there?

A. No, sir; never.

Q. Did he say anything about spoons, or anything?

A. He had two pewter spoons on the medicine table, and he wished me never to take them out of the room to be washed, but they must be washed in the bowl over his washstand and put back on the table.

Q. Did he give you any reason for that?

A. Not any, sir.

Q. Who visited her while you were there?

A. Well, a Mrs. Ober—I think the lady testified here—came frequently. Mrs. Coffin came once after leaving, and Mrs. Potter was there pretty much every day, and Washington Bartlett, I did not know the gentleman, I heard him tell the boy to go after him twice. Whenever he got an ill turn, and thought he was going to die, he wanted to see Washington Bartlett. Once a clergyman visited him, and Sisters of Charity occasionally came.

Q. Was there anything that attracted your attention in regard to the visits of the Sisters of Charity?

A. Not anything; I have never been in the room; I never saw them but once.

Q. Did he ever say anything to you about their visits?

A. He asked me one evening that the Sisters were there, and asked me what their occupation was; I told him some were visiting the sick, some teaching the ignorant, and each and every one had occupation. He made the reply: "What good can they do me, coming to visit me, a poor sick man, when they don't bring me anything to eat. I don't see what good Bishop Alemany does, coming here every evening; he never brings me anything to eat. Father Gallagher the same; he comes here bothering me talking, and he brings me nothing to eat."

Q. Did he ever say anything else to you on the subject of eating, or his food?

A. He told me several times that he was starving, and he would tell me to go and get something; and I would have it ready. I gave him about five meals a day while I remained with him, because I saw that nourishment was what he wanted.

Q. He would say he was in a starving condition?

A. I saw that there was nothing to cook in the house when I went there. I was called there as a first-class cook, and I was surprised at that, for I was capable of cooking, if there was anything to cook.

Q. What did you find in the way of supplies?



A. Half a pound of brown sugar, a little cornstarch, a few eggs, and about half a dozen Boston crackers. That was the amount of the stores he had in the house, with the exception of a few potatoes.

Q. What do you think was his actual condition with reference to sufficiency of food when you went there?

A. Well, I thought that he deprived himself of really the necessities of life, and that was the reason he was so sick—from seeing nothing in the house. I told him I wished to give him nourishment, and he gave me twenty dollars; and the next day I went to town and spent eight dollars in getting him the necessities that I thought he required. And I believe in four days after he was able to get out and walk in the garden.

Q. You say that he had meals four or five times a day?

A. I gave him five meals a day, counting his egg-nog in the morning, his breakfast, then his dinner, and then his supper, and then, in the evening, some light food, such as corn starch, cracker, or an egg with wine in it—a bowl full sometimes.

Q. Was it at these times that he spoke of being in a starving condition?

A. Yes, sir; at any time those persons that I have mentioned came to see him, he would say, “What do they want?” or, “Why do they trouble me when they don’t bring me anything to eat?” or something to that effect.

Q. You said you stayed there about eleven days?

A. I think so—as near as I can remember. I think the first dislike he took to me was, he told me he had very much trouble to find a nurse, and he told me the first evening I went there that he was going to have a nurse; but I did not find a nurse coming there, and when Mrs. Hawes came, it relieved me very much of what I had to do, and I said to him I would like to have Mrs. Hawes remain, if possible; that I would do anything under her, and I would like to have her remain, and he need not get anyone else. He said, “Don’t you know she can’t leave her own place; she has got children to see to, and she cannot leave for that reason.” He said nothing more; but from that time he began to scold me.

Q. What did he require of you in the way of personal attendance upon him?

A. Well, I made his bed when he got up, and gave him a bowl of water to wash in. I made his fire, took care of his room, gave him his medicine and his food.

Q. Had he any prejudices or antipathies to certain places where you went to get things for him?

A. Not at all, sir.

Q. Did he ever have any talk with you about any particular places?

A. No, sir.

Q. Do you remember his saying anything about Bishop & Co.?

A. I remember an instance of a lady bringing in a package of groceries, and he asked her at the time they were brought in, and he gave her some answer, or said something at the time—

Q. [Interrupting]. Do you remember who it was?

A. Mrs. Potter. She told him how much money she had spent, and he asked her before she had time to say a second word, where she got those groceries; and she told him—I don’t remember the place now—I believe it was Bishop & Co.’s, where she told him she got them at the time; and he made the reply, I won’t use them. She says, “Why?”

I am not certain, he says he would just as lief use anything from the bottomless pit of hell, as anything that came out of that store. So he rung the hand-bell that he had there, and the boy came out, and he told him to go back with the packages, and if they asked him why, to give them no satisfaction, and if they offered him any money, he said, "Don't take it." He sent them back, and I did not hear any more at that time.

Q. In this feeling which he seemed to have towards Mrs. Hawes, did he seem to be sincere?

A. Yes, sir, he did.

Q. Did you take care of him at night?

A. No, sir, I never did.

Q. From what you saw of him, and his talk and demeanor while you were there, did you form any opinion with respect to his mental condition at that time?

A. Yes, sir, I did.

Q. What was that opinion?

A. Well, from the time I first saw him, and noticed the expression of his eyes, I thought he was an insane man; if I did not think so, I would not have remained there the second day; but having no one, as he said, that every one was dirty always, and would do nothing for him, I thought it was a charity for me to stay with him; and on those conditions, I stayed till he began scolding me, and my rest was broken by his coughing at night, and I thought he had better relieve me; so I asked him to relieve me. He said yes, he would see, and he was seeking for some one, and he sent for another lady; and he had several girls come there, and he thought he would make it appear that he was going to discharge me, although I had given him the notice first; and when he found one, he paid me off, and shook hands with me, and asked me to come and see him, and he said, "Mary, not alone when I am alive, but when I am dead, come and see me. I shall be in Redwood City, and I shall not ask for anything to eat or drink, but I shall lay there, composed and happy, and you will love to see me."

Q. Relative to his mental condition, you think he was in a state of insanity; is that what you mean?

A. Yes, sir; I thought he was an insane man without any contradiction. I have stated it, and I should say so again.

*Cross-Examination*, by MR. PRATT—Q. To what extent or degree do you think he was insane?

A. Well, in one way from the manner in which he treated himself; he contradicted himself. What he would say in one hour he would contradict; and he would tell me I was not speaking the truth.

Q. Do you mean, when you say he was insane, that his reasoning faculties were utterly destroyed?

A. At sometimes, I think so.

Q. How, generally; did he generally seem to know what he was talking about, and understand what business he was doing?

A. Well, sometimes he would, but he used to forget. For instance, he told me to get him food, and I would bring it in to him, and he would say he was starving. When I would bring it in he would say, "What is that?" I would say, "Well, just the food you ordered;" and he would order it away. And he says, "Do you mean to kill a man? You know I cannot eat anything at all." I would look at him and his eyes would roll very much as if excited, as I had seen other

persons do that were crazy. I could not think anything else. I would stand and look at him till he would tell me to take it away.

Q. You were in no fear of him?

A. No, sir; I had not crossed him. I was only a servant.

Q. As long as you complied with all his wishes, and did not cross him in anything, he treated you well?

A. He treated me well till I left. After I left I went back to see him. I had no reason to complain of his treatment.

Q. You went there the first of January, and remained eleven days?

A. I think eleven days.

Q. Did you cook his food for him?

A. I did, sir.

Q. You say you gave him meals five times a day?

A. I did, sir.

Q. Was he usually satisfied with the food you brought him?

A. Yes, sir; I believe so.

Q. How was his appetite?

A. He had a ravenous appetite.

Q. Was that invariably the case. Did he eat regularly in that same way every day?

A. He did, sir, with the exception of one or two days when he got a little excited, thinking he was going to die. I do not know for what reason. He was that way one day, and he got very much worse, and after those two days I believe he did not eat quite so often.

Q. Did there seem to be any difference in his temperament, disposition or degree of irritability when he was speaking of dying?

A. Yes, sir; he grew very much worse.

Q. More irritable, nervous, impetuous and imperative?

A. He didn't sleep quite so well.

Q. How did he sleep ordinarily?

A. Very well; in the night I never was disturbed at all. Sometimes from half-past eleven till six in the morning I heard nothing of him.

Q. When you first came there, he complained of his starving, did he?

A. The first thing when I went there he said he had nothing to eat, and he wished me to come as quick as possible, and get him some. It was then half-past five in the evening, and I returned and got my clothes, and went out, and he still wanted his supper, and would not allow the lady there to get anything. I made him some of what I call baby food, and he ate quite a bowlful, and said it seemed delicious; he never tasted anything so good. So I thought he was in a starving condition.

Q. On the following morning you got supplies?

A. In the morning, I think two or three times, I had tried around in the neighborhood there to get such food as I thought proper; and I told him there were no places there that I could get the things that were proper, such as nice cakes, etc.; I told him I wanted to go to town to get them. I think that was the third day.

Q. He gave you twenty dollars to purchase supplies with?

A. Yes, sir.

Q. Then you commenced feeding him well?

A. Yes, sir.

Q. Up to that time he had been very irritable and petulant?

A. Well, he was very weak, as I said, and when he began to eat I think he gained strength, and was able to get up and go out.

Q. As soon as he commenced eating, he began to gain strength, and in three or four days he was able to go out in the garden?

A. Yes, sir.

Q. He also became more calm and quiet?

A. Not at all, sir.

Q. He continued as irritable as before?

A. Yes, sir.

Q. And the same degree of nervousness? Did he assign any reason for sending back the goods to Bishop & Co., at that time?

A. Not to me; I was not conversing with him; but he did to a lady that was in the room, that brought them.

Q. How much time was you there with him; how much time did you ordinarily spend in his room?

A. Well, I never was in his room only when I carried the food to him. He compelled me to hold the waiter before him, as he was not able to hold it at that time. He did not talk any, because he said it was dangerous to speak when he was eating, as he might choke himself.

Q. Were you ever present at any interviews between him and any person that called upon him?

A. No, sir.

Q. You do not know how he conversed with them, or upon what subject?

A. I do not, sir.

Q. You said something about his expressing fear of being choked by his food?

A. Yes; if I would speak to him.

Q. Do you know anything about the condition of his throat—whether it was diseased or otherwise?

A. No, sir; he said it was very dangerous at any time to speak to any person when they would be eating.

Q. I believe you stated that his mind wandered at times, or seemed to, didn't you?

A. Yes; at all times I thought his mind wandered.

Q. Give one instance that you consider most striking and remarkable of those wanderings of the mind?

A. By contradicting himself in one sense.

Q. Give another instance.

A. And preaching. He would preach to me like a priest, telling me what I should do to gain heaven. For instance, I asked him one evening—Saturday evening—if I could go to church the next morning. He said "Yes. How long shall you be gone?" I said, "Well, not quite an hour." So I went, making him as comfortable as I could before I went—making a fire. I remember exactly that I went at twenty minutes past six, and returned at six minutes past seven, and he told me I had been gone two hours. I said no, Mr. Hawes, only so long. "Well," he said, "I am starving." I went to the kitchen, in order to get breakfast, and he called me back and spoke to me. "Listen to me, and don't you make no reply to what I am saying, till I get through." Then he says, "You need not go to church. Our Lord did not tell you to go to church and worship pictures, or pray. Our Lord says only give what you can to the poor, and take up your cross, and you will go direct to heaven." I said, "I have nothing to give to the poor. You have an abundance," I says. I thought at the

time he would dismiss me, and I would be glad if he had, and that is why I made the reply. I was tired of it. I said, "You have an abundance, and you cannot take ten cents with you." "You wish to bring me to a level with you, in regard to going to heaven." I says, "I am in a higher place than you, until you get baptized, and then give what you have to the poor." He had a small crucifix, and he took that and said, "H—m, you are right. Go, and get my breakfast." He had kept me all that time, when he said he was in a starving condition. I thought he would let me go and wait upon him, and from that and other circumstances, and what I have seen with other persons who were insane years ago, I cannot form any other opinion than that he was insane. I thought so from the second day I was there.

Q. I understand that is an opinion you formed, but I want the facts from which you derived that conclusion. I understand the second instance is when he said he said he was starving, and wanted his breakfast, he stopped you and talked a few minutes on the subject of heaven?

A. Yes, sir.

Q. And used the language which you have detailed?

A. Yes, sir.

Q. From that, you could not help forming the opinion that he was insane?

A. Well, from the look of his eyes, their wildness and their movements every way, and what he said.

Q. What movements every way? Describe them, if you please.

A. Well, his eyes—he would rub his eyes with his hands.

Q. What else about his eyes? Anything in particular?

A. Well, the expression of his eye, just like an insane man.

Q. What do you mean by that? That they were remarkable brilliant?

A. Yes, sir.

Q. Is not that always the case with a man in the last stages of consumption, or do not you know about that?

A. I do not think it is. I have seen persons with consumption and seen persons who died insane, they had the same expression in their eyes.

Q. Have not you seen persons who had long been sick, their lungs being nearly consumed with consumption; did you ever notice that they had the same expression of the eyes when they were near death?

A. I never noticed it. I think their eyes would be dull and bleared and not wild, those persons I have seen. One person I have seen die of consumption, and those persons I have seen—I have seen one die of insanity, and their eyes had that expression in them. I never saw any person that I could compare their eyes to only his.

Q. This was in the morning, was it not, this last instance you have spoken of, or was it in the evening?

A. In the morning.

Q. You got back home a little after seven o'clock?

A. A few minutes past seven; yes, sir.

Q. You went then and got Mr. Hawes' breakfast after this conversation?

A. Yes, sir.

Q. Did the breakfast suit him?

A. Yes, sir.

Q. Did he eat it as usual?

A. Yes, sir.

Q. How did he seem after that?

A. He seemed quiet.

Q. Was no one there during that day?

A. I think Mrs. Potter was there, sir.

Q. Did any gentleman call there during that day?

A. I do not seem to remember that day particularly.

Q. What else occurred that day, which you consider remarkable in his conduct?

A. Well, I don't remember anything that day particularly.

Q. Did he remain during the balance of the day calm and quiet?

A. Yes, sir; I do remember another circumstance that day; I was forgetful just at the moment. It was on Sunday; he was able to get up, and went out on the porch and sat a while. He seemed very feeble after he got out, and as I wished to get him to the room I gave him a little brandy and water. He had become quite feeble, and said he wished to see Washington Bartlett, and sent for him. Washington Bartlett did not come at the time. He came in, and he says, "I think I can walk myself, now." I had his arm leading him, and a small bench that he used to put his feet on—and he said "I am just like I was when I was a boy." He had told me a few minutes before that I should watch him; that he might die. I felt frightened. He said to me, "I want you to put that bench there, so that I can jump over it, just as I did when I was a boy." I thought his eyes were getting so bright that I thought he was getting crazy. I says, "Mr. Hawes, you will fall, or something, and get hurt, or smash your face." Well, I got everything out of the way, and put down the bench, and he ran towards it, and when he got to the bench he put one foot over quietly and says, "I am dying."

Q. He seemed exhausted?

A. Yes, sir.

Q. How long did this occupy?

A. I fanned him then for a little while, and he wished to get into bed; and I disremember who came in; I think Washington Bartlett came after he was in bed.

Q. The same day?

A. Yes, sir.

Q. Did he become quiet and rest after he got into bed?

A. He did not seem to speak anything to him at all; he was tired and exhausted.

Q. You say he seemed to feel feeble when he was sitting on the porch?

A. Yes, sir.

Q. He came in and ran, as you have described, and then seemed exhausted?

A. Yes, sir.

Q. Did he lay down and go to sleep?

A. No, sir; he did not go to sleep.

Q. He remained quiet?

A. Yes, sir. I left him a few moments after that.

Q. Did you have any more talk with him that evening?

A. I do not remember; he didn't converse with me on any subject on any time except concerning his food.

Q. This occurred on Sunday?

A. Yes, sir.



Q. The first Sabbath you were there?

A. Yes, sir.

Q. The first Sabbath after the first day of January?

A. Yes, sir.

Q. Those are three occurrences upon which you base your opinion of his insanity. Is there any other that you can state to the jury?

A. Well, I don't know any other instance. I don't think of any; sometimes I forget.

Q. Did he assign to you any particular reason for sending his wife away from the house that night?

A. No, sir; he did not.

Q. Did you state on your direct examination all, substantially, that transpired between him and his wife?

A. I was not present, sir; but I thought it a very unusual thing for a man in his usual senses to treat his wife with such indifference, as I did not know it was her when she entered, and I was surprised at it.

PATRICK DURKIN called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. How long have you lived in this city and county?

A. Twenty years.

Q. What has been your business?

A. Sometimes it is one thing, and sometimes another; lately I have been in real estate, sir.

Q. Did you know Mr. Hawes in his life time?

A. Yes, sir.

Q. Where did you live with reference to his Folsom street property?

A. I lived on Tehama street, near Sixth, at the time.

Q. What degree of intimacy or acquaintance was there between you and him?

A. He visited my house as early as 1858, I believe, and ever since kept up an acquaintance until he died.

Q. Did you know Mrs. Hawes?

A. Yes, sir.

Q. Did you ever have any conversation with Mr. Hawes about his wife?

A. He made some remarks to me about his wife and his children.

Q. When was that?

A. Well, on several occasions.

Q. When first do you remember as near as you can the time he first had any talk with you about his wife?

A. He talked to me about his wife before he went to Europe.

Q. Shortly before?

A. Well, say a month or two before.

Q. What did he say?

A. He complained of his unhappiness and the state he lived in there.

Q. What did he say?

A. He continued to speak about his children.

Q. What did he say about his wife in the first place, as to what she was, if anything?

A. Well, at that time he didn't say much about her except to say she was a disturber, and was not a fit person to visit my house.

Q. What did he say about his children?



A. His children he said he loved very much, but they were in the hands of the mother, and he would do anything to have them taken away from the care of the mother.

Q. What was the character of the influence he said she had over the children?

A. That she taught them to lie, and they could not have the truth in them if they were brought up by her; and several other items.

Q. What other things did he say?

A. I tried to persuade him of that at the time; and I thought he was wrong in thinking so.

Q. What did he say when you remonstrated with him?

A. Well, he said I could not be his friend if I would take any sides at all; that he knew her better than I did—that I could not be his friend, and to take any part with her.

Q. Did he ever have any conversation with you in respect to her character for purity or fidelity to him as his wife?

A. Not at that time. After he returned; after he got home he did.

Q. When was that?

A. I think that was in September, or along in October.

Q. What did he say to you about that?

A. He told me at the time that he thought his wife was untrue to him, and that he would give any man or any person that could bring a reconciliation between them—that he would pay them handsomely; twenty thousand dollars, or fifty thousand dollars.

Q. To do what?

A. To separate them and get his children.

Q. What did he want of the children?

A. To get them away from her care—that if she would consent to it that he would separate from her; and he would pay any man who would do that or bring it about, twenty thousand dollars, or fifty thousand.

Q. If any man would get his wife away or separate them, he would pay twenty thousand dollars or fifty thousand?

A. Yes, sir.

Q. How separate them, legally, or what?

A. Legally; by divorce or agreement.

Q. He would give fifty thousand dollars?

A. Yes, sir.

Q. Did he ever make any accusations or statements respecting the paternity of his children, or either of them?

A. No, sir; not to me.

Q. Did he ever specify any person or persons as those with whom his wife had been criminally intimate?

A. He did mention one gentleman.

Q. Whom did he say?

A. Well, his name is spoken of very frequently.

Q. Go on, and tell us.

A. Mr. Bartlett was the only man he mentioned to me.

Q. What did he say about him?

A. He said he had a great deal of confidence with him, but he had found out latterly he had deceived him, and that he was as big a scoundrel as any of the others were. He called him an old office seeker; a damned old office seeker; those were the words he used.

Q. To what extent did he speak to you of Mrs. Hawes and Mr. Bartlett?

A. Well, he went back as far as the year he was in the Legislature, and he said that from that time that Mr. Bartlett and his wife were on intimate terms.

Q. By intimate terms you mean carrying on criminal intercourse?

A. That was his intention.

Q. Did you undertake to remonstrate with him about that?

A. I did sir.

Q. What did you tell him?

A. I told him that it could not be; that a person so well known as Mrs. Hawes could not be guilty of anything of the kind, without the public knowing it; and that he should have good authority before he accused Mr. Bartlett or his wife of any such acts.

Q. How did he behave when you undertook to remonstrate?

A. Well, he behaved—he commenced cursing and damning, and said he had not a man living to befriend him now. He said: “I thought you were my best friend, but I see you are in league with the rest.”

Q. Did he appear to you to be sincere in these accusations; did he appear to believe them himself?

A. He did, fully, in my estimation; and all I could say would not convince him out of it.

Q. In talking on this subject, what was his manner in reference to excitement?

A. Well, he appeared very much excited; walking around, talking all of the time. Of course, I could not say much, for it would cross him.

Q. When he got on this subject, how long would he talk about it?

A. Sometimes an hour; sometimes longer or a shorter time.

Q. How often were you in the habit of seeing him after he came home from Europe?

A. Very often. Sometimes he called probably twice a week at my house, and he asked me to come up in the evening; and I would go up in the evening to see him after he got home, probably three or four times a week; probably not so often; sometimes in the day.

Q. What was the predominate feeling in his mind, as expressed to you in regard to his wife?

A. He had a perfect hatred.

Q. Did that feeling ever, during all the time of your acquaintance with him, undergo any modification or change whatever?

A. It increased, rather than a modification.

Q. Did you ever have any conversation with him about that?

A. Very often, sir.

Q. Did you ever supply him with food?

A. I did, sir.

Q. To what extent?

A. Well, sometimes I would take him his breakfast, sometimes his supper, very little; and very often he came to the house.

Q. How often was it after he returned from Europe that you supplied him with food?

A. I could not say how often, Mr. Barnes; it was very often.

Q. Was that voluntarily on your part, or at his request?

A. Well, he considered anything that my wife cooked was better than anything he could get elsewhere.

Q. Did he ever assign any reason to you for coming to you for food?

A. He said what he got at home was never cooked; that he had a lot of hounds around him who would as soon poison him as anything else; that they neither cooked his victuals nor felt inclined to give him anything to eat.

Q. Did he ever mention the subject of the apprehension on his part, that he would be poisoned?

A. Not that I recollect of.

Q. What did he say of the people who were about him?

A. He said there were a lot of hounds around him, who would probably take his life. That he had always a great dread of men, and a greater dread of his wife, than any other person.

Q. Did he ever speak of danger of being killed, as connected with that?

A. He did, sir, in regard to staying in the house there. He said he was afraid something might happen, that his life would be taken away; that he never wanted to go near her nights.

Q. Did you ever have any conversation with him, on the subject of clergymen?

A. I had, sir.

Q. I want you to state what it was.

A. He asked me about getting baptized at one time. He said he was under the training of the Archbishop and Father Gallagher, and said he thought of getting baptized, "and," said he, "I wanted you to be my godfather." He asked me if my sister also, would not be godmother. I said "Yes, we would be very glad to have the honor of taking the position of godfather," etc., and then he went on for some time. He was putting it off, he said, until he had more time, and it ran along until he left for Europe.

Q. Now, when he came back, did you have any conversation about it?

A. No, sir, I had not. He commenced telling me of his treatment when he was away.

Q. What did he tell you?

A. He told me he took his two boys to put in college in Europe, in a Catholic college, and that he was treated so shamefully about that, that he got disgusted with the whole of it, and believed they were all humbugs.

Q. What did he say had changed his opinion of religion?

A. The whole answer was that they kept him waiting in a cold room for an hour or an hour and a half, and he got thoroughly disgusted with them for that. They kept him waiting in that way before they gave him an audience, or a hearing.

Q. Well, what effect did that have upon his views of theology and religion?

A. He discarded all his former views of them.

Q. He didn't believe in it any more?

A. - He didn't believe in it any more.

Q. Did he give you that as a reason?

A. That was his reason to me.

Q. What was his language? The character of his language, with reference to profanity or not, when he was discussing his domestic relations to you?

A. That she was a damned 'so and so.

Q. What did he call her? How did he express himself?

A. He called her every name that was bad.

Q. With reference to profanity, or not?

A. He would bring in the most profane terms.

Q. How in reference to decency?

A. Well, there was no decency left when he commenced cursing and damning and swearing, not a particle.

Q. Was this profanity or indecency in reference to general subjects, or principally in relation to his wife?

A. In relation to his wife when he would talk of that subject.

Q. During the time that elapsed between the time he returned from Europe and the last time you saw him, did you observe any other peculiarities about him, either of language or conduct, than those you have mentioned?

A. I observed that he was entirely changed from the time I first knew him—an entirely different man. He seemed to lose confidence in everybody, and any person that he commenced to speak about. I thought he was an entirely different man than what he was before.

Q. Have you any means of knowledge as to what extent he was supplied with food, and the ordinary necessities of life in his house?

A. I had an opportunity of seeing very often how he was supplied.

Q. How was that?

A. I often came there. He had nothing to eat unless it was a dry piece of bread, or sometimes a little else; but very little of that probably. He had a drawer where there were some victuals. If they had anything of any kind he would have it there. I often handed him these things out of his drawer.

Q. Where did he keep them?

A. He kept them in a kind of a cupboard or closet.

Q. In the same room where he slept?

A. In the same room where he slept.

Q. At this time what room in the house did he occupy?

A. He occupied a room that was off one side, or the office and adjoining room.

Q. When you would go there and take food out of the cupboard, what was its character as to being good food for a man in his condition?

A. I considered it was not fit for use, in his state at the time.

Q. At such times did he make any remark in reference to his condition, with reference to food?

A. He always complained of being starving to death, and that nobody would help him, or give him anything.

Q. What was his condition with reference to other comforts; clothing and linen, and all that sort of thing.

A. Well, his clothing seemed to be comfortable, so far as wearing apparel was concerned.

Q. Were there any other peculiarities than those you have mentioned, that you observed about him, attracting your attention, as making him a changed man from what he was before?

A. Yes, sir.

Q. What?

A. His promises to me and to others. I found that he still insisted on keeping them.

Q. What sort of promises?

A. Promising, whenever you done anything for him to reward you well for it. There was a time when it was necessary to do something for him, and I sent a man to him to aid him, and he said: no, he had never promised any such thing.

Q. What was that?

A. He promised to obtain a position for a friend of mine, and he denied it entirely, said he had never promised any such thing. He contradicted himself on many things, and I knew he was not right.

Q. Anything else?

A. Yes, sir; other things.

Q. What?

A. Well, the time that I—I think it was some time before that he got into some trouble with a party, and he promised me a thousand dollars if I would make that right with the party.

Q. What was that—that shooting affair?

A. That shooting affair. Well, when I settled it I never asked him for any money. I thought he might pay me—I believe Mr. Bates recollects that he offered me probably twenty dollars and I didn't take it.

Q. At the time he used this language to you about his wife, you say you suggested to him that his views as to his wife were not correct. Did he ever make to you any other charges about any other person than Mr. Bartlett, or lay the maternity of any other child to her?

A. He did, sir.

Q. What did he say about that?

A. After he returned from Europe he commenced talking about Mrs. Hawes and those persons, and asked me if I knew Carrie Caldwell? I said I did, very well. I had seen her at Mrs. Hawes'. He said: "Don't you know that that is her daughter?"

Q. He asked you if you didn't know Carrie Caldwell was Mrs. Hawes' daughter.

A. Yes, sir. I said it is very strange it has taken until this late day to find it out. And I asked him the question how he had learned that. He says: "It is none of your business, and you have nothing to say about it. I am only telling you, and it is none of your business when I found it out, I am only telling you now, that you may discard that woman, and not allow her in your house." I thought I was the first he had mentioned it to at the time, but I found out from the state of things that he had mentioned it to others. However, I persuaded him all I could; I told him it would be a shame and injury to the reputation of his children; and what was more, that he never should say anything about it, even if it was so.

Q. Did he seem sincere in the conviction that Carrie Caldwell was his wife's child?

A. He did, as much as in anything he ever expressed.

Q. When you remonstrated against his taking that position as to the relationship of his wife and niece, what did he say; did it irritate him?

A. Oh, he got quite offended and irritated.

Q. What was his language and demeanor?

A. His language was bad. Whenever he got excited, there was no command to his language; as of course many people know.

Q. How many times did he speak to you about this little niece of Mrs. Hawes'.

A. Probably on two or three occasions.

Q. Did he tell you anything more than that generally, that she was Mrs. Hawes' child? Did he say where she was born, or anything about that?

A. He never did anything, at all.

Q. He just stated that mere fact?

A. Just stated the fact; yes, sir.

Q. Down to what period before his death did your acquaintance with him, and your visits extend?

A. Probably within two or three weeks of his death.

Q. And when was the last period he discussed with you the character of his wife, either in relation to the persons you have named, or Carrie Caldwell?

A. I think it was probaby the 1st of January—the night of the 1st of January.

Q. This New Year's night, where were you with him then?

A. Well, he was at my house that night. He took dinner there, and then I went home with him, and he commenced this tirade against Mrs. Hawes; and I got very much dissatisfied with it after I got home, and I told him that I would not stand it any longer; that I could not hear him express such wrongs of Mrs. Hawes.

Q. You got quite disgusted, I thought I heard you say?

A. Yes, sir; with the language he used that night in regard to Mrs. Hawes. I said: "You should have authority for that before you publish it; and though that is the first, second, or third time you have said it, you have given no authority." He said: "Do you doubt my word?" and he commenced talking violently, saying that I could not be his friend any longer, and that I was Mrs. Hawes' friend, and I could not be his friend any longer. Afterwards I went there, when he got over his anger. He sent one of the little boys to me. I think it was as late as nine or ten o'clock. I came there, and went in. He took my hand, and said: "You have not come here lately; why is that?" I said: "No, sir; I didn't think you wanted me. I thought you felt that I had insulted you about Mrs. Hawes." Says he: "I don't want to hear anything about her. You are my friend; and you cannot be any longer, if you call Mrs. Hawes' name." He didn't use the name of Mrs. Hawes.

Q. What name did he use?

A. He said, that devil.

Q. Did you ever hear him speaking of his wife when he spoke of her in any tone or manner of ordinary respect?

A. It was always with disrespect.

Q. How with reference to profanity?

A. Well, it was owing to the stage of the subject. Sometimes he would go on a high key, and curse like everything, curse and damn.

Q. Did he talk to you about his projects or his plans?

A. He did, sir.

Q. What did he say about that?

A. The first time he ever talked to me about anything in regard to the disposition of his property was, he told me at his own place on Redwood Farm at one time, that that was going to be Horace's great estate—that Redwood farm.

Q. That he was going to leave it to Horace?

A. That he was going to leave that to his son Horace.

Q. When did he tell you that?



A. I believe in 1867; and then a year or a year and a half after he commenced to tell me about this great Chamber of Industry.

Q. What did he say about that?

A. He said he was going to leave that as a monument in memory of Hon. Horace Hawes of his benevolence, etc.

Q. A monument of Hon. Horace Hawes' benevolence?

A. Yes, sir, and continued along about what he should do, how many should be benefited by it.

Q. Did he speak of his own remembrance in the minds of men, of his benevolence?

A. Oh yes, sir; frequently.

Q. What did he say about that?

A. He told me a long story about it; what benefit it would be to the public, and the world at large; that everybody would be coming here.

Q. What did he say about himself, in connection with it?

A. Well, he described himself of course, as a great benefactor.

Q. Did he ever talk with you about anything else?

A. Yes, sir.

Q. When?

A. I believe it was in the latter part of 1869 that he commenced talking to me about the Mont Eagle University, and I questioned him generally. Said I: "Mr. Hawes, you were saying you were going to leave that to Horace." After he had explained this university I reminded him that he had told me so. "Oh," he said, "I have changed my mind. I am going to leave that for your children and every man's in the State." And he commenced telling a long story on the subject which I could not possibly relate—I cannot recollect now what he did say about it.

Q. How did he express himself with reference to all these things; with quietness, extravagance, or how?

A. Well, as long as he was expressing himself on this subject he was quiet. He wanted to make it appear to me that he was the greatest benefactor on the face of the earth; that no other man had ever done what he was going to do; or that there was no other way—he always mentioned that there was no other way that he could curtail his wife from having any share.

Q. What is that?

A. That there was no other way he could do to curtail his wife from having any property; that that was the only way he could take.

Q. That this was the only way he could curtail his wife?

A. Yes, sir; that he had left his son and his girl enough to live on, and he would never leave her a dollar to live on at all.

Q. Are you giving his language or his conversation now?

A. I am giving his language.

Q. How often did he talk with you upon this subject of his disposition of his property in relation to his wife?

A. Very often.

Q. Was this the general sentiment expressed by him which you have now mentioned?

A. It was.

Q. Was there any change in his views—did he always speak, I mean in connection with this plan of his—of that being the only way of preventing her getting any part of the estate?



A. He always had a prejudice to his wife getting any part of the estate, no matter what subject he was on—no share of his property.

MR. BARNES—You may cross-examine him.

THE COURT—We will take our adjournment now.

Here the Court adjourns until ten o'clock A. M., November 21st, 1871.

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## SEVENTH DAY.

TUESDAY, NOVEMBER 21, 1871.

PATRICK DURKIN recalled for *Cross-examination* by MR. PRATT—Q.  
Have you a family?

A. Yes, sir.

Q. How long have you been married?

A. How long have I been married? Over fourteen years.

Q. Where do you now reside?

A. I reside on Howard street, near Eighth.

Q. Did you own the place, or rent it?

A. I own it.

Q. How long have you been the owner of that property?

A. Going on a little over two years.

Q. You say you are now in the real estate business?

A. That is the last business I was in.

Q. What business are you in now?

A. I consider that business out of business now. I am still doing everything in it that I can.

Q. Have you any office?

A. No, sir, not at present.

Q. Have you ever had?

A. Yes, sir.

Q. Where was it?

A. On California street.

Q. At what place?

A. At Charles D. Carter's office.

Q. How long did you have an office at Charles D. Carter's office?

A. About very nearly three years.

Q. Were you in the employ of Mr. Carter during that time?

A. I was not, sir; I was doing business on my own account.

Q. Did you have separate apartments? Apartments for your business, for your office?

A. No, sir. I had the general run of the office; that is, I had a desk at any place that I felt so disposed, either in the private office or outside.

Q. But you did no business for Mr. Carter?

A. I did. Returning to my own interest, that is, I sold lots for him, and expected to get—always got a share of the percentage.

Q. Your business then was to find purchasers for property, for Mr. Carter?

A. Yes, sir. Purchasers often found me there.

Q. Did your name appear in Mr. Carter's advertisements?

A. No, sir.

Q Did you publish any advertisements of your own?

A I did not, sir.

Q Was there any desk or any place about Mr. Carter's office, where your name appeared?

A No, sir, not that I recollect of.

Q Did you ever find a purchaser for any property, during the three years you were there?

A I did, sir, frequently.

Q When did your connection with that establishment cease?

A It ceased some several months before Mr. Carter died.

Q When did you first go there?

A I went there in the early part of 1865.

Q In the early part of 1865?

A Yes, sir; or, probably, it was the latter part of 1867; between 1867 and 1868.

Q What business were you engaged in immediately before your connection with Mr. Carter?

A Well, I was immediately before I went there, I was engaged in the same business—real estate.

Q Where?

A On Merchant street.

Q Did you have an office there?

A I had an office with Mr. Pickett.

Q Who?

A Mr. Pickett; a desk. I was there a short time with him.

Q What Pickett? Do you recollect his first name?

A James.

Q Before you went to Mr. Carter then, you had a desk in the office of James Pickett?

A I used Mr. Pickett's desk.

Q Did you have the run of his office, the same as you did of Mr. Carter's?

A Well, we both had the same—used it as the same; whenever we got a purchaser, we divided the percentage.

Q Did you advertise over your own name during that time?

A I did not, sir.

Q Did your name appear in Mr. Pickett's advertisements?

A No, sir; I didn't think that he ever had his own name advertised, except cards.

Q Did your name appear on any sign around that establishment?

A No, sir; not that I recollect of.

Q How long were you with Mr. Pickett?

A A few months.

Q What branch of the business did you attend to principally while you were with Mr. Pickett?

A I attended to any customer that I got, and tried to make a sale, either to sell or to buy.

Q Can you now give the name of any one who ever placed any land in your hands for sale?

A I can, sir.

Q State one, if you please.

A Richard Finley.

Q When was that?

A I think that was in 1868. He placed his land; I think it brought about eight or nine thousand dollars, the property he sold there.

Q. Did you make a sale of that land?

A. I did, sir.

Q. Did you receive any commission for such service?

A. I did, sir.

Q. Do you recollect what commission?

A. The commission was two and a half per cent. I think, as near as I could get at it; two and a half or three per cent.

THE COURT—What is the object of this? I do not see how far you are going to trace this back.

MR. PRATT—The object of it is simply to show the status of the witness.

MR. BARNES—What do you mean by his status?

MR. PRATT—He was asked on the other side what his business was, and he answered, real estate business.

THE COURT—You have traced him through his history with Carter, and now you take up Mr. Pickett. If there is any particular object in tracing his history back—

MR. PRATT—[Interrupting.] Nothing but what I have suggested.

THE COURT—I don't think we can spend that much time; we have so many witnesses before us.

MR. BARNES—He may bring in his books, and show what he has been doing. If counsel wants them, we will submit them.

THE COURT—If there is anything to impeach his veracity, or recollection, or anything of that sort, I do not wish to cut off any such examination.

MR. PRATT—Q. You spoke yesterday, in your direct examination, of Mr. Hawes having promised you at one time to procure a place for a friend of yours?

A. Yes, sir.

Q. What place did he promise to procure?

A. He promised to procure a place for a Mr. McNamara, that I sent out to his place—a situation for him.

Q. Where?

A. In town.

Q. In what business, or office?

A. Oh, some office that had been in the gift of the Government at that time.

Q. When did that occur?

A. I think that occurred in 1869.

Q. And you also spoke of having settled the difficulty for Mr. Hawes, for which he promised to give you one thousand dollars—what difficulty was that?

A. It was some shooting scrape that happened in his office on Washington street with a Mr. Taylor; I think that was the name.

Q. With a Mr. Taylor?

A. Yes, sir; they had one or two trials, I think, once or twice in town here, and the jury disagreed. It was coming on election time; I think it was an election or something coming on, and he had not time to attend to the next trial that was coming on, and he asked me if I could not settle it, "I will give you a thousand dollars if you will settle that." He was sued for a large amount of money. I told him, "You need not give me anything; I will settle it without any compensation," and I made some remark of that kind. "Never mind," he says, "I will pay you for the trouble;" so it passed on, and I went

down to Santa Clara, and compromised with the man—I took his lawyer down with me, and compromised the suit, I think for four or five hundred dollars.

Q. Who was the lawyer who went down with you?

A. His name was Moffat; and Mr. Cook was his associate in the case.

Q. Do you know where Mr. Moffat is now?

A. Mr. Moffat is dead, now, sir.

Q. How did he happen to undertake the settlement of that difficulty?

A. I undertook it through Mr. Hawes.

Q. Did Mr. Hawes come to you, in the first instance, and request you to effect the settlement?

A. He asked me one day in the office, if I knew this man McNamara. I told him I did, very well; that he lived in my house at the time, on Tehama street. He asked me if I could settle that suit; he said he was afraid of Cook—he mentioned Mr. Cook's name more particularly; that Cook would injure him all he could. I told him that Mr. McNamara lived very near me, and I would speak to him about it.

Q. Do you recollect what took you to Mr. Hawes' office on that occasion? What you went there for?

A. I frequently went to Mr. Hawes' place on other business.

Q. Did you go there on other business on that day?

A. I am not certain about that; I could not say.

Q. Didn't you go there for the special purpose of undertaking this business, of seeking this employment from Mr. Hawes?

A. I never did, sir; only at his request.

Q. After you had succeeded in settling the business, did you report the result to Mr. Hawes?

A. I think I reported the result to Mr. Hawes before I came down at Redwood City.

Q. Then you reported to him, did you?

A. I did.

Q. What did Mr. Hawes say then, in regard to that, I mean?

A. He seemed to be satisfied, and when he came into town, he wanted to have the thing dismissed through Mr. Bates.

Q. Did he offer you any compensation?

A. I think Mr. Bates offered me ten or fifteen dollars, which I refused.

Q. Did Mr. Hawes ever offer you any?

A. He never did, sir.

Q. Mr. Bates offered you ten or fifteen dollars?

A. I think it was that amount; something to pay my expenses up and down.

Q. You were mistaken then, yesterday, in saying that Mr. Hawes offered you twenty dollars?

MR. BARNES—He did not say so.

WITNESS—[At the same time]—I never said so.

MR. PRATT—Then I misunderstood you.

A JUROR—He did say twenty dollars.

MR. BARNES—He did say twenty dollars, but he said that Mr. Bates offered him twenty dollars.

WITNESS—I said ten or fifteen dollars.

A JURYMEN—You said twenty dollars.

MR. PRATT—You stated yesterday that Mr. Hawes dined with you, New Year's day?

A. I stated that he dined with me, I thought, on New Year's day.

Q. Are you certain about that?

A. I was under that impression.

Q. At your house?

A. At my house.

Q. Where you now reside?

A. No, sir.

Q. Where did you then reside?

A. I resided on Tehama street, between Fifth and Sixth.

Q. Do you say now that Mr. Hawes dined with you on New Year's day, 1871; the first of January, 1871?

A. I was under that impression, that he dined with me—I thought it was New Year's day.

Q. New Year's day is a holiday, and a day of some note. Cannot you refresh your memory so as to determine the question whether he dined on that day at your house, or not?

A. I think that was the day.

Q. At what time on that day, about what hour did Mr. Hawes come to your house?

A. On that day that he came, I think it was about four o'clock.

Q. About what time did you take dinner?

A. We were eating dinner when he came.

Q. Did he come there by your invitation?

A. Well, I am not sure that he came there by my invitation. He happened to come in. I don't think he did, because if he did, we would be likely to wait for him. I think he came as he was passing along.

Q. Had you no friends dining with you that day?

A. None but my own family, that I recollect of.

Q. Did Mr. Hawes sit down and take dinner with the family?

A. He did, sir.

Q. About how long were you at the table?

A. Well, not very long. I was anxious to get home.

Q. He came about four o'clock?

A. I think it was about four o'clock.

Q. At what time did Mr. Hawes go away from your house on that day?

A. He went away very soon after his dinner.

Q. About how long did he remain in your house?

A. Perhaps an hour; a little longer.

Q. Was there any conversation, during that hour that he was there, about his family affairs?

A. I don't recollect any.

Q. Did Mr. Hawes go away alone?

A. No, sir; I went with him.

Q. Where did you go with him?

A. Out to his house.

Q. How long did you remain there?

A. I could not say how long; probably I staid an hour; probably longer.

Q. About what time did you arrive at his house?

A. I could not say exactly the time.

A. I don't recollect whether he did, or not. He talked so much, and so often, that I could not very well tell now what he did say.

Q. Did he then assign to you any other reason for disposing of his property in that way?

A. He might have, but I paid very little attention to what he would say in regard to his property, he spoke of it so often.

Q. You don't recollect whether Mr. Hawes ever assigned any other reason?

A. Yes, sir; he may or may not; I don't recollect.

Q. How many other occasions did he talk to you about making the disposition of the property?

A. They were more numerous than I can recollect now.

Q. Can you recall any one of those occasions?

A. I can recall that so far as memory—so far as hearing him speak of it frequently.

Q. Well, state when, and the place where any conversation on that subject ever took place between you and Mr. Hawes?

A. In his own room.

Q. When?

A. Well, it was along in November.

Q. November, 1870?

A. November, 1870; probably in October.

Q. In his room here in San Francisco?

A. Yes, sir.

Q. On Folsom street?

A. Yes, sir.

Q. At the same place?

A. Yes, sir.

Q. Did all the conversations that you had with Mr. Hawes about that matter take place in San Francisco?

A. Well, the most portion of it; the greatest portion of it did.

Q. Did you ever have a conversation on that subject anywhere else?

A. I think not, sir; I don't know that I had any place else otherwise than San Francisco.

Q. You think one took place at this time in November?

A. I think it was between October and November.

Q. A year ago now?

A. A year ago.

Q. When did the first conversation on that subject take place?

A. I think it was sometime before he started for his trip. He went first to the States and then came back, and after he came back I called on him, and he was telling me about these institutions that he intended establishing.

Q. You say his conversations on that subject between you and Mr. Hawes were very numerous?

A. Well, they were so numerous that I could not recollect how often he spoke of it. He spoke of it very frequently.

Q. Was any one else ever present at any of these interviews between you and Mr. Hawes?

A. Sometimes, yes, sir; Mrs. Douglas was there, that took care of him, and sometimes the boy.

Q. They remained in his room while the conversation was going on?

A. I don't know that they did, particularly. They were in and out, just as he wanted them.

Q. And on each one of these occasions he wound up the conversation by informing you that his object in conveying away property was to prevent Mrs. Hawes from getting it.

A. No; I did not say he wound up that way every time there was a general conversation.

Q. How often did he say that—how many times did he say that to you?

A. Well, he said it several times, probably four or five.

Q. His first complaint to you about his wife was before he went to Europe, was it?

A. That is what I recollect.

Q. In the conversation you say he simply complained generally of his unhappiness?

A. He complained of his unhappiness, and after he returned he complained of his unhappiness.

Q. In this first conversation, and before he went to Europe, did he then make any specific charge against Mrs. Hawes?

A. So far as laying stress on her company, he did.

Q. That was all?

A. That was all that I recollect of.

Q. The next time he spoke to you on that subject was soon after his return from Europe?

A. Soon after his return.

Q. And that he spoke of it three, or four, or five times between that and the first day of January?

A. Probably as often as that; perhaps not so often.

Q. How many times did you visit Mr. Hawes after the first day of January?

A. I visited him probably once a week—probably once in two weeks. I didn't visit him so often after that.

Q. For how long?

A. Well, for a period, say probably a week or two after.

Q. For the period of a week or two after the first day of January you visited him two or three times a week?

A. Two or three times probably in a week.

Q. Do you recollect whom you ever met there on the occasion of any of these conversations after the first day of January?

A. I think I met Mr. Stebbins there once, and several others now that I cannot recollect the names.

Q. Are you sure you saw Mr. Stebbins there?

A. I think I did.

Q. Mr. Stebbins is a marked man; a man of considerable prominence; cannot you be certain?

A. Yes, sir; I think I met him there after that.

Q. Do you know you met him there after the first of January?

A. I would not be positive, but I think I met him there; it was after the first of January.

Q. Now state some other individual whom you met there after the first of January?

A. I met Mr. Everett there.

Q. Who was he?

A. The gentleman that was stopping there writing for Mr. Hawes.

Q. You always met him there when you went there to see him?



Q. What was the conversation, if there was any particular conversation between yourself and Mr. Hawes, while at dinner?

A. His conversation was mostly about my children.

Q. What was the conversation between him and you, after you went with him to his house?

A. It was general; on many topics.

Q. Did he at that time speak at all of his domestic troubles, of his family?

A. He did, sir. He spoke of his wife and his children; the influence that his wife had over his children, and many other things that he narrated.

Q. You remained at Mr. Hawes' house about one hour then?

A. Perhaps longer.

Q. He spoke to you on that occasion, of the influence which his wife exerted over his children?

A. He did, sir.

Q. What did he say that influence was?

A. His statement then was that he wanted to get the children away from the wife, if he possibly could; and narrated the same as I did yesterday, that he would pay so much for doing it, if there was anybody that could be able to do it in such way as he wanted.

Q. Did he speak about separating, getting the boy away from the mother?

A. He was more anxious about the girl. He thought he had the boy separated from the mother, that he had him under control, the boy, but not the girl.

Q. How did he speak of the boy? Did he manifest great affection for the boy?

A. Seemingly, he did always, whenever I heard him speak of him?

Q. Always?

A. I heard him praise the boy in every respect.

Q. Did he speak of the girl in the same way?

A. Not in general, as he spoke of the boy.

Q. Did he speak of her kindly, seem to be attached to her, or otherwise?

A. Well, yes, sir. I never knew him to speak otherwise of the girl.

Q. He spoke kindly of the girl, but more so of the boy. Is that the idea?

A. That is the only difference.

Q. Did he state to you on that occasion, any particulars, wherein Mrs. Hawes' influence was bad?

A. Yes; he said that she could not possibly bring her up properly; that she would spoil the girl by her being under her care.

Q. Did he say why she could not bring the girl up properly?

A. On account of the company and the associates she kept.

Q. Was that the only reason he assigned?

A. That was the principal reason that I recollect.

Q. Did he assign any other reason?

A. Well, he might have assigned other reasons. He talked so much, that it would be impossible for me, or probably any man of my position in life, to retain what he would say, because he talked at a rate that a reporter, or a man of great memory, could not even retain what he would say.

Q. Did he say anything about the mother being too indulgent and easy with the children?

A. Well, he did not state much about indulgence at all, that I recollect of.

Q. Did he say anything about it?

A. He might have.

Q. You do not recollect distinctly, whether he did or not?

A. No, sir.

Q. Did he make any mention to you of the fact, or did he assert that Mrs. Hawes was teaching the boy disloyal and treasonable notions?

A. Well, he would say that the boy would be a different boy when he would be away from the mother.

Q. He did not tell you any particulars then, wherein her influence was bad over the boy?

A. Not directly.

Q. Did he on that occasion have any discussion with you about his business—general business, or property?

A. He had, sir.

Q. What did he say in relation to that?

A. He found a good deal of fault with Mr. Bates in regard to the protection of his property, and also spoke of Mr. Putnam. He asked me if I knew him. I told him, yes; and he spoke of Mr. Putnam as a noble-minded young man, and he asked me if I thought he would not be a good man to trust with his property. I told him I thought he was. Says I, "I don't see how you can better your condition by changing from Mr. Bates; for Mr. Bates, I think, is strictly honest;" and he talked some time about it; and says he, "I like Mr. Putnam." And he commenced to praise him, and say so much about him, that I thought it was no use arguing with him any further.

Q. Did he say anything then about the disposition he intended to make of his property?

A. At this time he talked about these Universities—the disposition he was to make of the property he had in town.

Q. Did he unfold his plan to you—tell you what his plan and scheme was?

A. To some extent, he did.

Q. Generally; he told you generally what his plan and scheme was?

A. He told me.

Q. Did he speak of the Chamber of Industry at that time?

A. I don't know really what he did speak of. He spoke so much about both; he would speak of one, a portion of it one day, and again another day, on the College that he was to establish.

Q. Did he tell you at that time that his object and purpose in founding these Institutions, was to prevent Mrs. Hawes getting a portion of his property?

A. He told me he wanted to cut her off in every shape possible from having anything to do with his property; he was not going to leave her anything that he could help.

Q. He told you that on this occasion—on the 1st day of January?

A. He told me that on several occasions before.

Q. Did he tell you that on this occasion?

A. He might have said it on that day, and might not.

Q. You do not recollect whether he said it on that occasion, or not?

A. I don't recollect whether he did, or not. He talked so much, and so often, that I could not very well tell now what he did say.

Q. Did he then assign to you any other reason for disposing of his property in that way?

A. He might have, but I paid very little attention to what he would say in regard to his property, he spoke of it so often.

Q. You don't recollect whether Mr. Hawes ever assigned any other reason?

A. Yes, sir; he may or may not; I don't recollect.

Q. How many other occasions did he talk to you about making the disposition of the property?

A. They were more numerous than I can recollect now.

Q. Can you recall any one of those occasions?

A. I can recall that so far as memory—so far as hearing him speak of it frequently.

Q. Well, state when, and the place where any conversation on that subject ever took place between you and Mr. Hawes?

A. In his own room.

Q. When?

A. Well, it was along in November.

Q. November, 1870?

A. November, 1870; probably in October.

Q. In his room here in San Francisco?

A. Yes, sir.

Q. On Folsom street?

A. Yes, sir.

Q. At the same place?

A. Yes, sir.

Q. Did all the conversations that you had with Mr. Hawes about that matter take place in San Francisco?

A. Well, the most portion of it; the greatest portion of it did.

Q. Did you ever have a conversation on that subject anywhere else?

A. I think not, sir; I don't know that I had any place else otherwise than San Francisco.

Q. You think one took place at this time in November?

A. I think it was between October and November.

Q. A year ago now?

A. A year ago.

Q. When did the first conversation on that subject take place?

A. I think it was sometime before he started for his trip. He went first to the States and then came back, and after he came back I called on him, and he was telling me about these institutions that he intended establishing.

Q. You say his conversations on that subject between you and Mr. Hawes were very numerous?

A. Well, they were so numerous that I could not recollect how often he spoke of it. He spoke of it very frequently.

Q. Was any one else ever present at any of these interviews between you and Mr. Hawes?

A. Sometimes, yes, sir; Mrs. Douglas was there, that took care of him, and sometimes the boy.

Q. They remained in his room while the conversation was going on?

A. I don't know that they did, particularly. They were in and out, just as he wanted them.

Q. And on each one of these occasions he wound up the conversation by informing you that his object in conveying away property was to prevent Mrs. Hawes from getting it.

A. No; I did not say he wound up that way every time there was a general conversation.

Q. How often did he say that—how many times did he say that to you?

A. Well, he said it several times, probably four or five.

Q. His first complaint to you about his wife was before he went to Europe, was it?

A. That is what I recollect.

Q. In the conversation you say he simply complained generally of his unhappiness?

A. He complained of his unhappiness, and after he returned he complained of his unhappiness.

Q. In this first conversation, and before he went to Europe, did he then make any specific charge against Mrs. Hawes?

A. So far as laying stress on her company, he did.

Q. That was all?

A. That was all that I recollect of.

Q. The next time he spoke to you on that subject was soon after his return from Europe?

A. Soon after his return.

Q. And that he spoke of it three, or four, or five times between that and the first day of January?

A. Probably as often as that; perhaps not so often.

Q. How many times did you visit Mr. Hawes after the first day of January?

A. I visited him probably once a week—probably once in two weeks. I didn't visit him so often after that.

Q. For how long?

A. Well, for a period, say probably a week or two after.

Q. For the period of a week or two after the first day of January you visited him two or three times a week?

A. Two or three times probably in a week.

Q. Do you recollect whom you ever met there on the occasion of any of these conversations after the first day of January?

A. I think I met Mr. Stebbins there once, and several others now that I cannot recollect the names.

Q. Are you sure you saw Mr. Stebbins there?

A. I think I did.

Q. Mr. Stebbins is a marked man; a man of considerable prominence; cannot you be certain?

A. Yes, sir; I think I met him there after that.

Q. Do you know you met him there after the first of January?

A. I would not be positive, but I think I met him there; it was after the first of January.

Q. Now state some other individual whom you met there after the first of January?

A. I met Mr. Everett there.

Q. Who was he?

A. The gentleman that was stopping there writing for Mr. Hawes.

Q. You always met him there when you went there to see him?

A. Not always.

Q. Generally?

A. Yes, sir.

Q. Who else besides Mr. Stebbins and Mr. Everett?

A. I could not recollect who—numerous people that I met there; but I do not recollect now who they were.

Q. You met numerous people, but you cannot recollect who they were?

A. No, not all of them.

Q. Do you know Mr. Washington Bartlett?

A. I do, sir.

Q. Did you see him there on any of those occasions?

A. I believe I did. I seen him also one evening. I would not be sure whether it was before New Year's, or after. I think it was about that time.

Q. Did you ever see him there more than once?

A. I believe I never met him there but once.

Q. Did Mr. Hawes ever employ you to transact any other business for him than that you have stated?

A. He did, sir.

Q. How often?

A. He employed me to sell real estate for him.

Q. How long ago was that?

A. I think that is in 1868.

Q. Where was it? In San Francisco?

A. Yes, sir.

Q. Did he ever employ you more than once for that purpose?

A. I think that is all the sales he ever made, probably, in ten years, in San Francisco.

Q. Did he ever employ you more than once for that purpose?

A. That was the only time—not after that, because I never knew him to sell any after that.

Q. That was in 1868?

A. I think that was in 1868.

Q. Where was that property situated?

A. It was situated on Mission street, near First.

Q. Did you effect a sale?

A. I did, sir.

Q. What commission did Mr. Hawes pay you on that sale?

A. I think he paid me—I think it was two per cent.

Q. Who purchased the property?

A. John Carroll.

Q. How did you become first acquainted with Mr. Hawes?

A. At the earliest stage?

Q. Yes, sir.

A. I became acquainted with him on Minna street. I called to a friend's house on Minna street, as early as 1854, probably.

Q. In what way—what brought about the acquaintance?

A. This party were out with him from the States, and he happened to be in there, and I was introduced to him, and ever after that, I was acquainted with him.

Q. Did you ever have any business with Mr. Hawes, prior to this transaction in 1868?

A. I called on him on several occasions for counsel, and some little business that I had to do.

Q. Was he in the habit of visiting your house?

A. Well, not often at that time; he visited me probably two or three times as early as 1855 and '6.

Q. Was his wife ever at your house?

A. She was, sir.

Q. Did she come with him?

A. I don't recollect that she ever came with him.

Q. When was that?

A. Probably in 1867—between 1867 and 1870.

Q. Did she say anything to you at that time, about Mr. Hawes' purposes?

A. I don't recollect she ever did, sir.

Q. Has she at any time since?

A. Yes, probably, I heard her mention that he did not intend to leave her anything himself.

Q. When was that?

A. Along in 1869 and 1870 she stated, probably, a little of her grievances, and that among other things.

Q. How came she to talk to you on that subject?

A. Well, she thought I was friendly with Mr. Hawes, I suppose, he knowing my family, and calling occasionally, when he was in town.

Q. Did she ask you to intercede for her, and use any influence with Mr. Hawes?

A. She did not, sir.

Q. You said yesterday, that Mr. Hawes always spoke of his wife with disrespect?

A. He did always in private; he always spoke of her in disrespect.

Q. Did he ever speak to her disrespectfully in your presence?

A. He did, sir.

Q. When was that?

A. The first time I ever noticed him speak to her disrespectfully was in his own house, down at Redwood farm.

Q. When was that?

A. I think that was in 1868.

Q. What did he say to her that was disrespectful?

A. He told her, to use his word—I think he was speaking about some matter or other, that he says, "You hold your tongue."

Q. That was one of the instances?

A. That was one of the instances?

Q. On what other occasions, if any?

A. Well, on many occasions in his house there on Folsom street.

Q. What did he say on Folsom street that was disrespectful?

A. Well, he would order her out of the room, as long as there was anybody else there.

Q. What else?

A. Well, I do not recollect of anything else.

Q. That was all you recollect?

A. In her presence; he always said more of her behind her back than before her—when she was not present.

Q. What did he say behind her back that was disrespectful?

A. He called her all sorts of names.

Q. Mention one of them?

A. That she was a perfect devil—that she was a disturber; that she was anything at all but what was good.

Q. He called her a devil and a disturber?

A. A disturber.

Q. And generally it was anything at all that was not good?

A. That is his general talk.

Q. Did he use that language?

A. He used the words that I told you.

Q. A devil and disturber?

A. Yes, sir.

Q. What other epithets did you hear him apply to her?

A. He used so much epithet that I could not retain them in my memory, or anybody else.

Q. Those are the only ones that you recollect?

A. Well, they are some that I recollect; others that I—

Q. [Interrupting.] Give us the others that you recollect?

A. So far as names, he called her everything that was bad.

Q. Well, I ask you to state what it was besides. You say he called her a devil and a disturber—what other names did he call her?

A. Well, so far as the numerous names go—I do not see anything that would cause you to ask for any more names than the names you have got.

Q. Are those all that you recollect?

A. They are some that I recollect.

Q. Do you recollect any others?

A. I do.

Q. State one.

A. He called her a d—d disturber, in every sense of the word.

Q. Anything else?

A. That she would lie; that she would steal, and do anything that was bad.

Q. Did he tell you, at the same time, what she had lied about?

A. Oh, he did not tell me anything what she would lie about.

Q. Did he tell you what she had stolen?

A. Yes, sir; he mentioned about some articles of furniture, and some wheat.

Q. Did he tell you, at the time when he told you that she lied, that it was about this very wheat that she lied to him?

A. Oh, no; it was on other subjects that he would say that she lied.

Q. Did he ever say that she had lied, except in that connection?

A. He did, sir; frequently.

Q. How often did he say she had lied?

A. I could not recollect how often.

Q. You could not recollect how often? Those are the only things you can recollect now, which were disrespectful, are they?

A. They are the principal—these I recollect of.

Q. You say you have known Mr. Hawes ever since 1855?

A. I have, sir.

Q. When did you become intimately acquainted with him?

A. Well, how long? In 1866, '7, and '8.

Q. Was not Mr. Hawes generally a man of violent temper, impatient, and vain?

A. Sometimes he was, and sometimes he was very cool.

Q. Wasn't he vindictive and bitter to everybody who opposed his wishes in any respect?

A. Well, so far as his vindictiveness towards me, I often opposed him, and he was not vindictive towards me.



Q. Did you ever hear him speak abusively towards any one except his own family?

A. I did; frequently.

Q. Who?

A. The Judge on the bench.

Q. Who else?

A. And many other members of the bar.

Q. Anybody else beside members of the bar?

A. Well, yes; private individuals.

Q. More than one?

A. Yes, sir, more than one; more than a dozen.

Q. Now I would like to get a little more in detail here, Mr. Durkin, the conversation between you and Mr. Hawes, on the subject of religion, and particularly in regard to this renunciation of religion?

A. So far as the question of religion, I never discussed religion with him at all. He always told me these things of himself.

Q. How often did he talk to you on that subject?

A. Very often.

Q. When was the first conversation on that subject?

A. As early as 1867.

Q. Now, about this conversation after his return from Europe; he said that at some college there, where he went to place the children, they kept him waiting in the cold for an hour, or an hour and a half?

A. He did, sir.

Q. Did he state to you—did he ever tell you that he was a believer in the Catholic faith?

A. He said he believed in no other.

Q. Did he say that he did believe in that?

A. He did, sir.

Q. When was that?

A. That was as early as 1867.

Q. When was it that he spoke to you about his being under the tutelage of the Archbishop?

A. I think it was in the early part of 1868.

Q. That was in 1868?

A. Yes, sir.

Q. In 1867, then, he told you that he was a believer in the Catholic faith, and in 1868, he told you that he was under the tutelage of Father Gallagher?

A. That is as near as I could recollect the time.

Q. When was it he told you he was about to be baptized, and asked you to stand godfather?

A. I think that was in about that time I mentioned.

Q. About which time?

A. About 1868.

Q. Was it at this same conversation?

A. I think not; I think this was another time, that he called at the house—at my house.

Q. How long after that?

A. After what?

Q. How long after the conversation, in which he said he was under the guidance of Father Gallagher, where he told you he was about to be baptized, and asked you to be his godfather?

A. Probably it was a month or six weeks; I could not say as to the time.

Q. Was that the last conversation you ever had with him on the subject of religion?

A. I never recollect of having any more conversation with him, other than that.

Q. You don't recollect his speaking to you on that subject again?

A. No, sir; I think he got through with it then.

Q. When was it he told you he had renounced the Catholic faith?

A. This was after he returned. He found fault with the clergy, and the manner of treatment, etc.

Q. How long after?

A. Perhaps it was a month after.

Q. But before these other conversations, was it?

A. No; it was after all the conversations.

Q. Then you did have still another conversation with him, on the subject of religion?

A. This was the last conversation I had with him, when he found fault with the treatment he had received at the college, etc.

Q. And in that same conversation, he told you he was about to be baptized, and wanted you to be godfather?

A. No, sir, it was long before.

Q. What is? When that conversation was?

A. That was over a year before that.

Q. It was a year before that?

A. Yes, sir.

Q. That he told you he had renounced the Catholic religion?

A. If you are going to confuse it that way—

Q. [Interrupting.] I don't want to confuse you, at all.

A. You are, sir. You were going back a year and a half from the time I told you of.

Q. In 1867, for the first time he told you, he believed in the Catholic faith?

A. Yes, sir.

Q. On his return from Europe, very soon after his return from Europe, he told you he had renounced the Catholic faith, did he?

A. He said he was sick and tired of it; he could not endure them any longer. They did not treat him right, and he was not going to—

Q. [Interrupting.] Did he say sick and tired of the Catholic faith, or sick and tired of the Catholics?

A. Of the Catholics.

Q. He was sick and tired of the Catholics, because they did not treat him right?

A. Yes, sir.

Q. Was that the first conversation you had with him on the subject of religion, after he returned from Europe?

A. It was he that proposed that conversation himself. I had no conversation with him directly, at all.

Q. When was that? Was it the first conversation he proposed on that subject after his return?

A. It was.

Q. Now, did he ever have any other conversation, or did he ever talk to you again on that subject?

A. He never did that I recollect of.

Q. Now, tell me when it was that he said he wanted you to stand godfather, for he was about to be baptized?

A. That was in 1868; the early part of 1868. He pretended to be a strong believer then in the church.

Q. Was that the same time he told you he was under the care of Father Gallagher?

A. It was some time before that.

Q. Did he ever then, at any time, tell you that he had renounced the Catholic faith, or was it simply that he was down on the Catholics because they did not treat him right?

A. He could not renounce the Catholic faith, because he never belonged to it—the way he explained himself.

Q. The expression then, was simply that he was down on the Catholics because of the manner in which they treated him?

A. That was the substance of it.

Q. Now, did he tell you wherein they had treated him badly?

A. He did, sir. It was in the college that he had called to leave his two boys there.

Q. Did he make any other complaint about them?

A. Only his treatment—only the treatment that he had received there.

Q. Did he say anything to you in any of these conversations, about what he had done for the Catholics here, or anywhere else, in regard to giving them land for churches, or anything of that kind?

A. Yes, sir; he mentioned that.

Q. Did he say that he had done a great deal for them?

A. He considered that it was a great deal.

Q. Did he complain then, that they had neglected him, and had not treated him right, after all that he had done for them?

A. He did, sir; he complained of the Sisters. The Sisters came there with their hands empty, and never had anything to nourish him at all, to give him to eat, or nothing to console him.

Q. That when he was sick and dying, they paid no attention to him?

A. No attention to him.

Q. They neglected him. How long is it since you were discharged from your position in the Mint, Mr. Durkin?

A. I think that was probably in 1867—1866, or '67.

Q. Do you know why you were discharged?

A. I do, sir.

Q. What was it?

A. For being absent one morning.

Q. Was that the only reason?

A. I was probably accused of indulging in drink that morning.

Q. Anything else?

A. Nothing else, that I know of.

Q. Who was Superintendent at the Mint at that time?

A. Mr. Swain.

Q. What was your business in the Mint?

A. I had charge of the gold from the melters' and refiners' department to the assaying department.

Q. That is to say, you were a porter, and carried the gold from one place to the other?

A. Yes sir.

Q. Now state generally whether, during all this time of your acquaintance and visits to Mr. Hawes, back and forth, he continued

to manage and transact his own business, and kept charge of his own concerns, and looked for it generally.

A. I don't think he did.

Q. You don't think he did?

A. No, sir.

Q. Do you know anything about it?

A. I do. He asked me to call on Mr. Bates for anything he wanted to do. Sometimes he would have me call on other parties.

Q. Would he give you specific instructions what to do?

A. He gave me specific instructions what to say.

Q. Didn't you consider that looking after, and keeping the management; a control of his own business?

A. Well, so far as making the payments, and letting his property, I considered that the others done that part.

Q. They always did it under his supervision, didn't they?

A. I should judge so.

Q. Don't you know, as a matter of fact, that Mr. Hawes never did execute, or allow any one else to execute an agreement for him without very carefully scrutinizing it most critically?

A. That was his general character.

Q. Didn't you know that he never allowed any one to contract a debt for him to the amount of ten cents, without supervising that carefully and critically? Was not that the general character, general conduct of the man as long as you knew him?

A. That was a great deal his way of doing business.

Q. Don't you know that in many matters he was an exceedingly mean and penurious man?

A. In some relations he was; and then, again, in some cases he was not.

Q. State in what he was liberal. In what relations was he liberal?

A. In that very instance alone, where I settled with a man for five hundred dollars. He was willing to pay him a thousand. That is one instance that he was liberal; and in donations, sometimes, he was liberal.

Q. For charitable purposes?

A. For charitable purposes.

Q. Do you know of any instances of his donations for charitable purposes?

A. Yes.

Q. More than one?

A. I knew one donation that he gave.

Q. What was that?

A. That was the church lot on Tenth street—Tenth and Howard.

Q. Do you know, now, what year he gave that?

A. I think he gave that—I won't be sure—I think he gave it in 1860; probably 1860, or '61.

Q. Were you in the real estate business then?

A. I was not, sir.

Q. Did you know the value of that property at that time?

A. Well, I can pretty well guess what it was worth then.

Q. You are in the business now; you know what its value is to-day, do you not?

A. Well, I could go very near it, probably.

Q. Did you know any other instances of his making like donations?

A. I heard of others—giving some property to the Ladies' Relief Society.

Q. Was that the property on which the place now stands—their Hospital?

A. The property is, I think, on Post street; runs from Post to Sutter, out in the Western Addition.

Q. A full block of land, is it not?

A. It is not a full block, I think it is probably two fifty vara lots; maybe more or less; I don't think it is a block.

Q. Do you know of any other instance—let me ask you about what time was that donation made?

A. That I don't recollect.

Q. Ten years ago?

A. I don't think it was as long as that.

Q. Five?

A. Yes, sir; it must be five.

Q. It cannot be ten. Do you know of any other instance?

A. I don't know to my knowledge. I heard he gave a lot for the benefit of a school in Redwood City, adjoining his farm.

Q. Do you know anything about the size of that lot, or what it is?

A. I do not, sir.

Q. Do you know of any other donations down there for churches or schools?

A. I heard he gave the Catholics a lot there also.

Q. At Redwood City?

A. Yes, sir.

Q. Do you know of any others?

A. I don't know of any others.

Q. Now, don't you know as a matter of fact, from your intimacy with Mr. Hawes, that, during all these years, while he was making these large donations for public purposes, he was exceedingly parsimonious in his personal and family expenditures? Didn't he live very meanly for a man of wealth?

A. I considered he did; meaner than anybody could live of his wealth.

Q. And was exceedingly stingy, that is the vulgar term for it—wasn't he exceedingly stingy in all of the expenditures which appertained to himself personally, and his family?

A. So far as his family is concerned, I think he was.

Q. How was it about himself, his own personal expenditures?

A. Well, I should judge he was pretty close on his own expenses, also.

*Re-direct-examination* by MR. BARNES—Q. After Mr. Hawes returned from Europe, how often, and to what extent, did he get his meals from your house, either taking them there, or having them brought to him?

A. Sometimes twice a day, sometimes three or four times a week, just as he—whenever his servants would leave, he would send a boy down, and they would furnish him something to eat, until he would be provided with a cook, and got somebody to provide him his meals.

Q. Did you take him food yourself?

A. I did, sir, on several occasions.

Q. How often do you think, during that fall and winter, did he come; up to the first of January—did he come to your house to eat?

A. Sometimes once a week, sometimes, probably twice; just as he happened to pass it. Sometimes he would come as late as eight or nine o'clock, and we would get breakfast for him—in the morning after breakfast was over.

Q. You were asked by Mr. Pratt, whether you could remember the epithets that he would apply to his wife, and you stated that he called her a disturber, a d—d disturber?

A. A d—d disturber.

Q. And some other names. And you said that you could recollect other names that he called her besides that he applied to her. You were not pressed further on that point. Now, I wish you to state, not characterizing his language, but as nearly and as fully as you can, the kind of epithets that he applied to her, if you remember any other name he called her except d—d disturber, a thief, a devil—won't you state what it was?

A. The stress he laid on it was beyond expression.

Q. Say what it was, and don't characterize it; say what it was. Don't say it was beyond expression, but state what it was, and let the jury judge if it was beyond expression. Tell me what he called her, so that they can see whether it was beyond expression?

A. He said she was a d—d vagabond; he could not trust her; he knew very well that she had deceived him. Those are the words he used.

Q. Any other names?

A. I don't know any other names he used after that. That was as common—it is very hard for me to express that name, because I really had a high regard for Mrs. Hawes, and knew very well that she was nothing of the kind. She was really a superior woman.

Q. In speaking of her, did he use any profane language?

A. Always cursing.

Q. Now, when you say "cursing," what language did he use? What did he say?

A. Well, he would curse her in terms, G—d d—n her, all these—

Q. [Interrupting.] That is what I want. Now, state what he said.

A. G—d d—n her; she destroyed my happiness; destroyed my children; everything like that. For a series of years, it would be very hard for a person to recollect everything he did say.

Q. I don't ask you to recollect everything he did say, but to refrain from characterizing his language, and give it to the jury, so that they can see whether it was improper. I want them to see just what it was, so that they can form some ideas as to its propriety or impropriety. Anything else?

A. I don't recollect anything else.

Q. How often did this language that you speak of, recur?

A. Frequently; probably once a week, or once in a month, as I would happen to meet him.

Q. Did it recur as often as he spoke of her at all?

A. As often as he spoke of her at all, he spoke of her in this disrespectful tone.

Q. Did you ever hear him speak of her in any other way than as a d—d thief, a d—d vagabond, and G—d d—n her—all these you have mentioned?

A. Whenever her name came up, he would speak of her in disrespect, in that way.

*Re-cross-examination* by MR. PRATT—Q. You mean to say now, that you never, since you knew Mr. Hawes, heard him speak of his wife in any other manner?

A. I say, during the last year.

Q. Is not that limited to a great deal less than a year?

A. I say it was within a year, that he spoke worse of her.

Q. Within the last year?

A. Within that year.

Q. Wasn't it all on the occasion of these conversations that you have already spoken of?

A. It was all along. He had a hatred to her since ever I spoke of the visit I paid him—

Q. All these conversations in which—

MR. BARNES—[Interrupting.] Go on and finish your answer. Since the visit you paid him when?

A. Down at Redwood City.

Q. When was that?

A. That was as early as 1867.

THE COURT—One at a time, gentlemen. You have the witness, Mr. Pratt.

MR. BARNES—He asked a question and then did not give the witness a chance to answer—that is all.

MR. PRATT—State when you first heard him speak of her disrespectfully, if you can?

A. As early as 1868.

Q. Have you ever heard him speak any way than disrespectful of her, since 1868?

A. I never heard him say anything at all in her favor since then.

Q. Did you ever hear him say anything in her favor prior to that time?

A. I never heard him speak well at all of her.

Q. You never heard him refer to her without speaking of her in these terms?

A. Whenever he would introduce anything about her, himself, he would tell all her traits of character, etc., and then speak disrespectfully of her.

Q. That is not answering the question. Did you ever hear him speak of her at all in any other way than as you have stated, disrespectfully?

A. Oh, he might in some instances speak milder than that, but never with this regard that any other decent—any decent man would of his wife.

Q. Let me ask you, why you didn't tell me, when I pressed you again and again, to state all the epithets that he applied to her, why didn't you tell me he called her a d——d vagabond?

A. Well, I thought the worse, that he used everything that was bad, was sufficient.

Q. Didn't I ask you repeatedly to say what he used, and finally got out of you that he called her a devil and a d——d disturber, and didn't I press you again and again to tell me what else he called her—why didn't you tell me, as you did Mr. Barnes, that he called her a d——d vagabond? Has that occurred to you since?

A. Well, there are things that would occur to me for a week if I hear all his conversation.



Q. Your answer then is, when I asked you that question, that you could not think, you did not recollect his having called her a d—d vagabond?

A. No; but I thought I used enough of that language to satisfy you.

Q. You thought you had used enough, but when Mr. Barnes asked you to state the other epithets, you thought it was proper to state them; is that it?

A. I felt no anxiety in answering Mr. Barnes on that account, any more than you.

Q. Let me ask you what Mr. Hawes' appetite seemed to be when he came to your place to eat—voracious?

A. Very much so.

Q. He seemed to enjoy this food very much?

A. He seemed to eat with a great appetite.

MR. BARNES—Did he ever pay you for any of these meals or food?

A. He never did.

MR. PRATT—Did you ever ask him for any pay?

A. I did not.

H. P. GALLAGHER, called for Plaintiff. Sworn.

*Examined by MR. BARNES*—Q. Your profession, sir?

A. I am a Catholic priest.

Q. How long have you resided in San Francisco?

A. Since September, 1852.

Q. Did you know Mr. Hawes in his lifetime?

A. I did, sir; I had an opportunity of knowing him for many years.

Q. Did you know Mrs. Hawes?

A. Yes, sir; since she became Mrs. Hawes. I was acquainted with her for several years past.

Q. Did you ever visit their house, either here or Redwood City?

A. Both.

Q. Did you ever have any conversation with Mr. Hawes about his domestic affairs?

A. I had, sir; several times.

Q. How early in point of time before his death?

A. It might be 1868. The first time, I think it was about 1868.

Q. Where did that conversation occur?

A. In his own house.

Q. At his own house in Redwood City, or here?

A. In this city, on Folsom street. He may have spoken to me of his troubles in my own house; I think he did commence them there; he called to see me, or visit me sometimes, and subsequently he introduced the matter, and wished me to know—wished me to speak to her on the subject. Either that, or I said I could not give him my opinion until I did speak with her.

Q. At the time you talked with him in his house here on Folsom street, what did he say to you about Mrs. Hawes?

A. I would do him the justice that when I pressed him—

Q. [Interrupting.] Just state what he said about her?

A. He complained generally of her.

Q. In what respect?

A. The impression made upon me was that he regarded her as intellectually his inferior, and not adapted to be his companion socially

and intellectually, and that her influence over the children was very bad.

Q. In what respect did he say it was bad over the children?

A. He said she lied herself, and made them lie, or permitted them to lie; and she would steal.

Q. You say you pressed him; how pressed him?

A. He was willing and anxious that I should give him some counsel as to what should be done in regard to the difficulties between them. I don't remember whether he wished me to see her of himself or whether I said: "I cannot give any opinion, knowing and hearing but one side." At all events, it was with his full consent and approbation that I saw her.

Q. Was that below, at Redwood City, or here.

A. Both places; this was several times. He came to my house and asked me to go over and see what could be done in the matter.

Q. Did you go?

A. I went; yes, sir.

Q. What foundation did you find there was for these charges against Mrs. Hawes?

A. I spoke with her, and I am sure she spoke to me in confidence, that is, you know, in full—feeling that she was telling the truth; I mean, with sincerity. I could discover nothing in the lady at all, on which, properly, fault could be found—upon which fault could be found, properly. I asked everything, and alluded to her temper, to her manner, and I could not discover that there was aught of blame to be attached to her.

Q. Did you go to his house at his request, in Redwood City, for the purpose of investigating these matters?

A. Almost every time he found me alone, he spoke to me of his difficulties, and when he was leaving the city, or going down, sometimes. I would meet him as he returned, back and forth, and he would ask me to call at Redwood City; and especially as she was then living there.

Q. Were they then living separate?

A. They were living in the same house, but, I think, not as husband and wife.

Q. Did you go to his house at Redwood City?

A. I went to his house. I took occasion to go there, on returning from the examinations at San José and Santa Clara, and stopped over night at his house.

Q. What time was that—in what year?

A. It was before he went to Europe; I don't remember the precise time; I did not take a note of it.

Q. Did you take dinner or tea with them?

A. I took my meals with them—dinner there, and tea that evening, and slept there that night. The whole evening, after dinner was through, was occupied in discussing these points.

Q. Go on and state what occurred, what was said on your next conversation with him?

A. Well, sir, it was merely a repetition each time. I spoke with her, and retired from the interview with her, satisfied that there was no blame to be attached to her.

Q. After you had spent that evening with them, finding out where the trouble was, or trying to, did you tell Mr. Hawes your conclusion?

A. I did, sir.

Q. Now, state what you said to him, and what he told you?

A. I stated to him then and there, as well as prior to that time, in the city, the same thing. I told him I had given it every consideration; that I was familiar with composing difficulties in families of that nature; that I had an idea of what would be reason in the minds of reasonable persons, for such disunion and discontentedness; that at his request, I had spoken to her at length, and I came from the interview with her, satisfied that there was no blame. I asked him, "Now please tell me, Mr. Hawes, do you not believe your wife is a virtuous; faithful partner?" He said, "I have no fault to find with her, at all." I mentioned that I would do him justice to say that of him. He would speak to me more sincerely, I suppose, than he would on many occasions—he admitted that he had no fault to find with her on those points. Then I said, "I have no reason—I can find no reason to justify your conduct in her regard. I would rather, if called upon, give the case against you, that the fault is on your side. You have suffered this feeling to become morbid upon you; that it is, what we would regard in our practice, a very grievous temptation. It has no foundation in any adequate cause," and I had been speaking with him frequently upon the Catholic faith—

Q. [Interrupting.] Let me arrest your attention one moment, Father Hugh. When you told him that at Redwood City, in his house, how did he treat you, and what did he say?

A. That was the last conversation I had with him upon the points, I believe, perhaps, ever. I exhorted him, having spoken through the whole evening, and having seen them both frequently together, and frequently in the absence of each other—I was then detached from other business, to investigate and adjudicate the whole case if I could, and the conclusion I came to, was, that he was in the wrong; that if he had the fortitude of a man of reason, that he should put it all away, and regard it as an error he had committed, and blot it out forever. And that they should go together, and live for the remainder of their lives as husband and wife—and even, to let the union commence at that moment, while I were there. "If I were giving you," I told him, "the last advice before you would be judged, or I would be judged, I would say this to you, that you are bound to take your wife to you as your partner, and treat her as your wife. That everything I have seen, pointed me towards that course." He asked me, lastly, would the church bind him to live with such a woman. I told him, "having married her, the marriage being once valid, it binds you for life, and, unless canonical reason could be assigned, of which I could find no trace, the church would bind you to live with her as your wife, and you could not be admitted to the church privileges, unless you did."

Q. What did he say?

A. He then arose and took his shawl around his shoulders. He was very infirm at the time, and turned around and said, "Well, I see you are not the man to compose this difficulty." I felt very mean—a little mean at that. I would say, however, that was the only word that I ever heard from his lips that implied any want of confidence in, or respect for me. We were always intimate.

Q. After that time, when he said that he saw you were not the man to settle that difficulty, did you have anything more to do with him?

A. I think no more after that, because I think that he went shortly after that to Enrope. I did not meet him any more I believe. I don't know that I ever met him again; perhaps once or twice—I had no conversation with him on the point; but such conversations were very frequent, that is, they had occurred frequently.

Q. Did you at any time, and if so, during what period, supply him with food?

A. I bade him welcome to my house on every occasion. He resided there, not far from me, and sometimes he would come in saying he was starving with hunger. I gave the girls, the house-keeper and the cook, instructions to always give him whatever he required; and he frequently took his meals there. There would be two or three times in a week—maybe two or three days in one week.

Q. How many times should you think, approximately, he came to your house, seeking food, and saying he was starving to death?

A. Well, the expression "starving," I did not observe it, did not hear it more than about two or three times, and I upbraided him for starving, or exposing himself so, as such facilities were for preventing that.

Q. What did he say?

A. He said, "Oh, Father, I don't care; there is no care taken of me any way; I don't care about these things."

Q. Did he complain to you of being neglected?

A. Oh, he did complain to me of her neglect of him, and of her extravagance, and making debts, and many things of that nature.

Q. I mean in respect to his being provided for with food at home, as a reason for his coming to your house so frequently?

A. He was then alone, living there; she was not then living there. I don't believe that he ever came to me—I don't know of his coming to me when she was there. I say I don't know of it.

Q. Did he ever express to you at any time, any apprehension of being hurt in any way?

A. He said, in speaking of her, or denouncing her, as he often did, he had no doubt she would poison him. I laughed at him about it though.

Q. That is to say, after you had investigated the case, and had represented to him how reprehensible his conduct was?

A. Yes, sir; I think so.

Q. How often was it that he told you, approximately, that he believed or was fearful she would poison him?

A. I don't remember the number of times, because I always laughed at him, and put it down as nonsense.

Q. Can you give the jury any idea about his manner and demeanor when he was speaking of Mrs. Hawes, as contrasted with his conduct at other times?

A. Speaking to her?

Q. Of her. While conversing of her, was there any change in his manner or demeanor as contrasted with that he exhibited on ordinary occasions, or when discussing general topics?

A. He would become nervous and excited. He did not become profane before me, that I can remember, but very much excited.

Q. How was the tone of his voice with reference to ordinary conversation?

A. Oh, in ordinary conversation he was—he had a very remarkable mode of getting along with anybody, and doing business, so far as

I could detect. He was a very intellectual gentleman, and would write and speak very well, and he was thought to give very wise counsel.

Q. Well, now when he was talking with her, what change, if any, did you observe?

A. I observed he would be rude with her, so that he would pain me. He would tell her "not to do that, she knew nothing at all about it." "Hold your tongue," and "please go out of the room." Such things as this, you know, I thought indicated very rude manner towards his wife.

Q. That was in speaking to her. What I want to ask you about, I don't make myself plain—is this: When you were talking with him about her, did you observe any difference in his manner or demeanor, look or appearance, from that which he exhibited when discussing ordinary subjects, and ordinary affairs of life?

A. He became more emphatic on denouncing her than any other topic; speaking of her in the way which he felt, and seemed to be anxious to impress it upon me—to impress his views or feelings upon me in her regard, but more excited, as I said, nervous and excited. I didn't know much else.

Q. Did you think that he was sincere and honest in his various beliefs he expressed to you about her, and the opinions he expressed to you?

A. Oh, a man under such a persuasion is as sincere as he can be. He is working under an error that has made itself like truth upon his mind or imagination. I have seen such cases so frequently that I am persuaded that he thought it was the truth. I think so. I have seen men tell me of facts that they believed had occurred, and were sincere in telling me so, and there was nothing at all of them.

Q. These facts and circumstances which you regard purely as matters of imagination with him, he relied upon as substantial facts?

A. Yes, sir; I am sure he did—I am quite sure he did.

Q. In what connection was it that he spoke to you of his fear that she would poison him?

A. It was with a view, I think, of meeting my argument in her favor. After his confidence was so far gone, he knew so much about her, or her malignity towards him, but he had no doubt she would poison him.

Q. Was that the occasion in which he used that language always?

A. I think it was. He never became excited with me, arguing the case, but he told me he was sure she would poison him; he had no doubt she would poison him.

*Cross-Examination by MR. PRATT*—Q. When did you first become intimate with Mr. Hawes?

A. I don't remember; the first year he was in the Legislature.

Q. The first year he was in the Legislature?

A. Yes, sir; I met him in the Legislature, and then in the Consolidation Bill—the Consolidation Act of the City and County; he was the author of that Act, and I had frequently to see him—frequent conversation with him, as to the meaning of some of the provisions of that Act. I had something to do with the County Hospital at that time, to know what the provisions meant, and he was the one that I always had recourse to. Harry Byrne, I think, was the Attorney, the City and County Attorney, at the time, and he oftentimes referred

me to him as the author of the Bill, to get points explained. It has brought me into considerable contact with him, and from that time I knew him pretty intimately; but still more so from the time he gave me the lot for the church.

Q. Was this while the Consolidation Bill was in contemplation—before it became a law, or after?

A. After its enactment, during the first year of trying to put it in operation.

Q. Your pleasant relations; or intimate relations, continued uninterrupted up to the time of his death?

A. Ever on.

Q. And during all that long period, you spent the most of your time in San Francisco, did you not?

A. I was twice in Europe, since.

Q. How long did those absences continue?

A. A year each time; about a year.

Q. The balance of the time, you were in San Francisco?

A. Yes, sir. I was a year running around the mountains, one time, when I got worked down in health—in going around, roughing it, to recover my health again, and I did.

Q. During all that time you saw Mr. Hawes, I suppose, very frequently?

A. Occasionally. I had no business relations with him from the time that we had the interviews about the Consolidation Bill, until about 1861—the summer of 1861, when I called upon him about the lot, and from that time, he and I were rather intimate. He was not always in the city, but I have seen him off and on, occasionally.

Q. When did the first conversation take place between him and you, in regard to these troubles with his wife?

A. It must have been about somewhere in 1868, I think.

Q. That was at your house?

A. I could not say where it first commenced. It may have originated there, or it was frequently there; but between my house and his, there is only a small distance, and we walked together, and I met him both places. It was the burden of the conversation when he spoke with me, unless I went on some business point.

Q. That was sometime in 1868?

A. I think it was.

Q. He introduced the subject himself; he appealed to you as a friend, to counsel and assist in the settling of the difficulty between him and his wife?

A. He wished me to speak to her.

Q. When did the last conversation on that subject, take place between you?

A. Before he went to Europe last. When I was returning from Santa Clara, I stopped at his house at Redwood City, over night. That is the last.

Q. His principal complaint, I understand, against her, was that she was his inferior, socially and intellectually, and had a bad influence on the children?

A. That was the impression that the tone of his remarks to me had upon me. That is the impression made upon me by the manner in which he spoke of her.

Q. He said to you at one time that she would lie and steal, did he?



A. Yes, sir; not once, but frequently.

Q. He said that frequently?

A. He did.

Q. Did he in any of these conversations, state what she had lied about, or what she had stolen?

A. He did not particularize any instances, that I remember; not any.

Q. When he came to your place, and complained of want of food, that he was starving, did you understand from his conversation, or the way he complained, that it was because he could not get food, or simply that he did not have such food as suited his taste, and such as he enjoyed?

A. I judged that it was in great measure, from parsimoniousness.

Q. Did he ever complain to you that he was in a starving condition, or hungry for want of food, except whilst his wife was living away from him?

A. I have answered Mr. Barnes, that I don't know that he ever did.

Q. Did he sometimes, in making these complaints, make complaints of the cooks; that they didn't fix things to suit him; that he could not eat their cooking?

A. He did sometimes. One time, I remember, he spoke and found fault with the cook, but that did not surprise me at all, for he changed his servants, cooks, and all, so frequently, and so unreasonably, that I paid no attention to that at all.

Q. Did he, in these same communications, complain to you that he was neglected; that no one cared for him, or looked out for him, or attended to him?

A. He made those remarks several times; at these same times, if you would allow me, I knew that she was doing everything to make him comfortable.

Q. Mr. Hawes was in an enfeebled condition, physically, during all the periods of his making these complaints, wasn't he?

A. He was. You know, I suppose, that he was in the Senate, the last time in Sacramento, and he was ailing then, to some extent, and these complaints were chiefly after that, subsequent to that last session of the Legislature.

MR. BARNES—You mean the last session in which he sat as a member?

A. In which he sat.

MR. PRATT—When you were spoken to by Mr. Hawes, in reference to their domestic troubles, did he indicate to you what he desired to bring about, whether it should be a reconciliation or a separation?

A. He complained to me of his troubles, and I listened to him. I considered they were not real; I proposed, what I would always propose in such circumstances, that these things could be easily examined with a view of reconciliation, that it would not do to break up his family without very grave cause, and therefore, he said, that I should see her, and I would find out sufficient from her myself to justify all his complaints. I don't know, sir, if he ever did acquiesce in the idea of reconciliation, though it was my aim.

Q. Did he ever speak of getting a divorce from his wife?

A. I don't remember that he spoke to me directly in that way, but the tone of my conversation with him would preclude his asking me such a question, as I always insisted there was nothing to justify a



separation, and that these whimsicalities should never be a cause to render it an invalid marriage—to break up the marriage bond, that it could not do—it would be introducing the worst principles, that it would tend to the subversion of society, and make widows and orphans; and I told him these things at length, and he was a man of intellect, and understood my remarks, and he would not propose to me, I am sure, under these circumstances, the idea of a divorce.

Q. What was the intellectual standard of Horace Hawes, as compared with other men comparatively?

A. I think he was a man of a high order of intellect.

Q. Was he also a man of education and attainments?

A. I believe he was of very high attainments. I believe he was a very excellent scholar. He could read Spanish, and operate in Spanish cases, that is, Spanish law and Spanish books. He had many fine Latin works in his library. He understood the classics, and was altogether, I think, a very good scholar.

Q. Did he in these conversations with you, state what provision he intended to make for his wife, either in the case of separation, or in case of his death?

A. He spoke of establishing by the means—the result of his large property, a great portion of it, a large intelligence office, that he had made provision for doing that. I don't remember much about the Mont Eagle University, but about the other he took great pride in. He intended to do that, and implied to me that he would not leave her any property—appropriated his means in this way.

Q. When did he first speak to you of his intention to found some public institution, intelligence office, or Chamber of Industry?

A. It was, I think, sometime between 1866 and '68—'68 it may be; I am not sure now precisely; I did not take any note of it, but it was before we had any conversations upon the difficulty with his wife. Well, it was all equal, about the same period, about the same times.

Q. Did he ever speak to you of having talked with his wife about the disposition of the property, and their having agreed upon it; he talked in such a way as left the impression upon your mind that he did not intend to leave her any portion of this property?

A. That was the impression made upon me.

Q. Was that the result—did you arrive at that conclusion from any one of the conversations, or from these generally?

A. From general, and from his repeated conversations on these things, and his complaints of her; his complaints against her.

Q. Did he in any of these conversations express in regard to his children attachment, or fondness or affection for them?

A. He always spoke of his children in terms of the greatest affection. He thought very highly of his boy; remarked to me what a noble boy he had become, if he were removed from her influence, and he has stated to me two or three times that Carrie was his only relief, his only consolation.

Q. That was his little daughter?

A. That was his little daughter.

Q. Did he ever state to you wherein her influence upon the child was bad; did he particularize?

A. Well, sir, he said that she was mean, and would lie, and let them and teach them to lie, permit them to lie; and give them a mean and bad example of dishonesty on her part, and that she was

not fit to be the mother of his children, or to educate his children at all, or raise them at all. These are the impressions made upon me repeatedly.

Q. Did Mrs. Hawes, when you went to see her, talk about the propriety of having a divorce from him, or did she ever mention that subject to you?

A. I rather think that she spoke of never seeking a divorce, or any relief at all; if he would give her half a chance to live, she would stick to him always, wait upon him, and do all she could for him.

Q. Did she ever speak to you in regard to the disposition of his property?

A. She did. She said she had learned that he intended to disinherit her; not in these phrases, but the same meaning; "and very unjustly, of course, you know, Father Gallagher. I do everything I can for him, really, at all times, and for his children, and I have no pleasure doing anything for anybody else."

Q. When did she first speak to you on that subject?

A. Oh, it was—I think I had spoken with him there on these family matters, 1868 and '9.

Q. Did she express to you in any of those conversations what her intentions were in regard to the property?

A. I don't remember that she did, sir.

Q. Up to how late a day did you continue to meet Mr. Hawes occasionally? You visited him, did you not, during his last sickness, at his house?

A. No; I was in Europe at the time. I believe I was in the East when he died. I was not here at all for the last year, the year before his death.

Q. Have you a brother residing in the city?

A. Yes, sir.

Q. He was here during that time?

A. Yes, sir.

MR. BARNES—He will be the next witness.

MR. PRATT—Q. You knew pretty thoroughly, did you not, Mr. Hawes' disposition and temperament, and his business habits?

A. I knew a good deal, I think, of him. He was very regular in all his business affairs, I think; unusually accurate; he was when it came to the minutiae of every point of business, and also of great accuracy; always was very watchful to have receipts and such documents, and would always be forthcoming and in proper order to show all about his business. I knew a good deal about it—his manner of dealing and doing business.

Q. Those habits continued, did they not—

A. As long as I knew him.

Q. You speak of his having complained very bitterly about his wife teaching his little boy to lie, or permitting him to?

A. That she would permit them to lie; teach them to lie.

Q. Didn't Mr. Hawes have a remarkably high sense of truthfulness and integrity?

A. He seemed to me to have.

Q. And a high sense of personal honor?

A. A high sense of honor. He sometimes denounced with more bitterness than most men, persons who had been wrong, or who had done him wrong, but I found him always very honorable, very good,

and just, in his appreciation of mens' character, unless, perhaps, where one crossed his path.

Q. Let me ask you, Father Gallagher, if he was not peculiar in his high appreciation of truthfulness—that whenever he found a person had once deceived or misled him in any way, that it made him particularly obnoxious to him?

A. Well, I could not give you any adequate impression upon my mind upon that point. I don't remember precisely. I know he was highly sensitive, and denounced anything like duplicity or lying, very unmeasuredly. I know that, but I don't remember anything particular.

Q. Let me ask you again, I don't know but you have answered once, when you saw Mr. Hawes last?

A. I think it must be 1869; I think it is; it may have been, sir, in 1870.

Q. Were you and Mr. Hawes in Europe at the same time?

A. No. At least, I may have been there before he left, but I did not see him.

Q. You did not meet him there?

A. No, sir; I did not know when he came; I didn't know anything about it; I didn't know when he returned—no, it was 1869, was the last interview.

MR. BALDWIN—What month in 1869, did you state?

A. It may have been the latter part of June, the time of the commencement of the college at Santa Clara and San José. I think it was sometime in June.

Q. You saw him then for the last time, I understood you?

A. Yes, sir; that is, I think so; I am not quite positive as to the time.

MR. PRATT—What were his habits in regard to the expenditure of money for his person and family expenses?

A. I think extremely parsimonious.

Q. At the same time, he was capable of great generosity for public purposes?

A. I knew only of two or three instances, in which he manifested any liberality, but he may have in other instances of which I know nothing.

Q. What were the instances that came under your observation?

A. He gave that lot to me for the church, where my church is now built.

Q. What year was that?

A. I think it was 1861; he gave a lot to the Ladies' Protection and Relief Society, and he gave a lot in Redwood for the church there, and a lot for the school, a public school. These are the only instances I know of his liberality.

Q. Do you recollect in what year he gave the lot to the Ladies' Protection and Relief Society?

A. I don't know what year; I know he gave it.

Q. That is a whole block of land there, is it not?

A. I don't know how much, sir.

Q. Do you recollect in what year he gave the lot to the church in San José?

A. In Redwood City, I mean. Oh, it might have been in 1865, I think, I don't know the time precisely; 1864 or '65—something about that.

Q. In what year did he give the lot for the school at Redwood?

A. About the same time.

Q. Do you know anything about his usual habit, in regard to subscribing for other charities, when they were seeking to raise money for public purposes?

A. I rather think he was found absent on those occasions.

Q. Do you know anything about his having aided, or given, or contributed to what was called the City University?

A. I don't know of that, at all.

Q. You don't know anything about that?

A. Not at all.

A JUROR—Q. Is Mrs. Hawes a Catholic?

A. Indeed she is not. I don't believe she has much idea of it either; not but I would desire that she would.

[Here the Court takes a recess until half past one o'clock.]

#### AFTERNOON.

FRANCES M. PARKER called for Contestants. Sworn.

*Examined* by MR. BARNES—Q. How long have you resided in San Francisco?

A. Thirteen years last June.

Q. What is your occupation?

A. As a nurse.

Q. How long have you been so employed?

A. Fifteen years.

Q. Did you know Mr. Hawes all that time?

A. I went there to take care of him a short time; in the month of December.

Q. Do you remember the time you went there?

A. Yes, sir.

Q. What time was it?

A. The thirtieth of December.

MR. BALDWIN—Q. Was that in 1870?

MR. BARNES—A. Yes, sir.

Q. How happened you to go there?

A. A Mrs. Harmon came for me to take care of him.

Q. Do you remember what time of the day it was when you went there?

A. I went to see him in the forenoon; he was just going off then. That was in the afternoon, between two and three.

Q. How long did you remain there?

A. Until six o'clock the next evening.

Q. When you first went there did you have any conversation with Mr. Hawes as to the length of time you were to stay?

A. No, sir; I told him I would come. I did not know that I could even stay over night. My engagements were such that I was liable to be called any moment.

Q. During that time, that you were there, did you have any conversation with him respecting his family affairs?

A. Yes, sir; he talked incessantly.

Q. Won't you state now to the jury what he said to you on that subject? What was the first thing he said on that subject to you?

A. The first thing he said was for me to keep his wife out of the room.

Q. Well—what next?

A. That she was disagreeable to him; that he could not endure the sight of her.

Q. When he commenced talking to you about her, did you say anything to him?

A. I told him I didn't want to hear anything on either side.

Q. You didn't want to hear anything on either side?

A. No, sir.

Q. What did he say to that?

A. "You are right; you are right." He repeated it over the second time.

Q. Well, what further conversation followed on that subject?

A. Well, his whole theme of conversation seemed to be an intense hatred and dislike of his wife.

Q. What did he say about her?

A. I do not know as I could specify every word that he said.

Q. As much as you can?

A. She was extremely disagreeable to him. I asked him if he didn't like her when he was first married to her. He said, "Yes." I asked him then when this dislike began. He said it was the birth of her first child. I asked the cause of it, and he said it was her unwillingness to take care of the child. He said she was d——n smart.

Q. Did he say anything about her use of money—her habits in that respect?

A. Yes, sir; he spoke of her; he said he would give her a few dollars, and she would go down town and spend it, and bring home a paper of candies. That was all it amounted to; all she knew.

Q. How was his language when talking about her with respect to its being profane or otherwise?

A. He would commence to be profane, and I told him I didn't like to hear it, and he said, "You are right."

Q. Did he say anything to you about the only thing his wife was fit for—what she was fit for, if anything?

A. Yes, sir; he told me she was a good cook; she could wash dishes and scrub the floor and keep the house clean; but said that that was all she did know—was not suitable company for him.

Q. Did he say anything to you on the subject of separation from his wife or a divorce?

A. Yes, sir; he told me that he had tried several times to obtain a divorce from her. He said if he was divorced from her he could put me in her place.

Q. What did you say to that proposition?

A. I did not make him any answer.

Q. Did he talk to you at all about his posthumous fame?

A. Yes, sir.

Q. What did he say about that?

A. He spoke of the College of Industry; what great benefit that would be to the city. I asked him where it was located. He said: "Have you lived in California as long as you have and do not know what I have given to the city?" I said: "I understand you gave the ground of the Relief Society of the city." "I did," he said; "it was worth \$10,000." I said it was a sand bank in those days. And he said: "I also gave the ground of the Tenth-street Church, where Father Gallagher preaches, and that is worth \$10,000 more; that is

\$20,000." I said: "That was also a sand bank, worth fifty dollars when you gave it to him."

Q. What did he say about his future fame?

A. In speaking of the College of Industry, I said it would be many years before it would be finished—before there would be money enough to finish it. He said he didn't care if it was a hundred years. He did not expect it would be in his day. He didn't care if it was not in the day of any of his relatives, so that the name of the Honorable Horace Hawes was handed down to posterity; it would be in every one's mouth, and upon the building. Every one would speak of his great donation to the State.

Q. Did you mean to say he used the language, "the Honorable Horace Hawes"?

A. Yes, sir; he always used it when he spoke of anything he had given—bequests.

Q. Did he talk to you on the subject of life insurance?

A. Yes, sir.

Q. What did he say about that?

A. He told me he would give me \$10,000 if I could find any company that would insure his life ten years, so that he could live until his son was of age.

Q. How was his general conversation—connected, or disconnected?

A. Not connected at all. One moment it would be about what he had given to the city; the next about keeping his wife out of the room; next, about his son—that was the way.

Q. Did you say anything to him about the way he was talking?

A. Yes, sir; I spoke to him two or three times about it, and he said, "You are right."

Q. What did you tell him?

A. I spoke about his will, and one thing and another. He said he did not intend to leave his wife anything; that she did not know how to spend money. I asked him if she would break the will, and he said "no," he would fix that.

Q. Did you say anything to him on the subject of his not being right in his mind, to talk that way?

A. He was running on at random during the night, talking almost incessantly; not sleeping—but not talking five minutes on any one subject. In the morning he was sitting out on the porch, speaking of one thing and another. I said: "I do not believe you are all right in the upper story."

Q. What did he say to that?

A. He put his hand to his head, and asked did I mean that. I said, yes. Said he: "I have not been for four or five years; you are right."

Q. Did he say anything to you about any provision in his will for you?

A. Yes, sir; he told me if I would bind myself by an oath to stay with him as long as he lived, he would make me Lady Superior over all the nurses in the city. He said they had Lady Superiors in the Convent, and he didn't know why I shouldn't be Lady Superior, since I was superior to them all.

Q. How did you come to leave on the second day?

A. I was called away.

Q. To an engagement?

A. Yes, sir.



Q. You mean a professional engagement?

A. Yes, sir.

Q. Did you tell him?

A. Yes, sir, I did.

Q. What did he say to that?

A. He commenced to swear; said it was all a contrived plan between Mrs. Hawes and myself to leave him alone, as she had gone to Redwood that day.

Q. What did he say about your connection with his wife, if anything?

A. I do not know as I understand your question.

Q. What did he say about—give us in full what he said about this being a plan between you?

A. He said it was a contrived plan between Mrs. Hawes and myself, because she went to Redwood that day, that I should leave him that night, and leave him entirely alone, without a nurse or any one to cook for him.

Q. Did he say anything to you about the extent of his property—what it was worth?

A. Yes, sir; he said he was worth between two and three millions.

Q. Did you have any money transactions with him during the time you were there?

A. To expend anything do you mean?

Q. Any money transactions with him; borrowing from him or lending him?

A. I lent him a dollar to pay the barber with. The barber was there and shaved him.

Q. Did he pay it back to you?

A. No, sir; he did not pay me at all.

Q. Did he tell you anything more about his getting a divorce from his wife?

A. No; he said that she had been offered a large sum; he had offered her several hundred thousand dollars if she would only take a divorce and leave him. It was all he wished for.

Q. Did he say anything about her getting married, and anything else?

A. No, sir; he did not; he ran at random. I asked him some few questions, and he answered them.

Q. Did you have any conversation with him, or did he with you, anything about Father Gallagher and his visits there?

A. Yes, sir.

Q. What?

A. He said Father Gallagher came often to see him, and said he was in a few days before I come, and he said he told him to stand there, (pointing his finger towards the door that separated the office from the sleeping room,) and he said, "I told him to go home and cook me a steak, and make me a cup of tea and some toast, and a baked potatoe. When he had done that he could come and talk religion as long as I was eating it."

MR. BARNES—Please repeat that, Mrs. Parker.

Witness repeats the last answer.

Q. Did you stay up with him that night?

A. Yes, sir; I stayed up all night.

Q. How did he sleep, if at all?

A. He did not sleep at all until four o'clock in the morning, and



then his sleep was very broken—from four to six when he was drowsy—he talked incessantly in his sleep.

Q. What did he require of you during the night?

A. I bathed him most of the time.

Q. How long did he require you to do that?

A. A good part of the night, rubbing and bathing him.

Q. What did you bathe him with?

A. Warm water; then with whisky; then rubbed him with a hair glove or a coarse glove, and then he had his lungs rubbed with cod liver oil.

Q. Where did you get the oil that he was rubbed with?

A. Off the table in his room. It was rancid.

Q. What kind of oil?

A. Cod liver oil.

Q. What was its quality and condition?

A. It was rancid—very poor.

Q. Did he talk at all upon religious subjects, or use scriptural language?

A. Not a great deal.

Q. Did he at all?

A. Once in a while he would quote some little passage from the Bible. It didn't amount to much.

Q. Did he talk to you at all, as to his own religious belief, if any?

A. Yes, sir.

Q. What about that?

A. He told me—he asked me what I was; I told him I was a Protestant. He said he was glad, and wanted to know what church I belonged to; and I told him, "I am a Methodist." He said he was brought up in the Presbyterian church.

Q. Did he say anything to you at all about his food, or what he ate?

A. No, sir; he seemed satisfied with whatever I gave him; Mrs. Hawes cooked it; she was there.

Q. Was Mrs. Hawes there during the time you was there?

A. Most of the time, until she went to Redwood.

Q. Were you present when she was in the room there?

A. Yes, sir.

Q. What was his manner and demeanor towards her?

A. Very disrespectful.

Q. What way?

A. A sort of sneering, stern way—turning the head—looking in an opposite direction—not seeming to bear her near him.

Q. Did he appear to you to be sincere in these declarations he made respecting her, in his life with her?

A. I think he did.

Q. You think he believed them?

A. Yes, sir.

Q. You say you have had an experience in nursing of thirteen or fourteen years?

A. Thirteen years in California.

Q. From what you saw during the time you were there, did you form any opinion, with reference to his mental condition?

A. Yes, sir; I did not think that his mind was all right?

Q. Did he find any fault, or make any criticism on your dress?

A. Well, in regard to a sontag I had on; It had steel buttons, and he asked me to take it off, as it drew from his brain all of the time.

Q. What?

A. The steel buttons drew from his brain.

Q. What do you understand the buttons drew from him?

A. He said the electricity—he could feel the electricity from the buttons, and they drew from his brain, and it would make him very sick if I did not take it off.

Q. Did you take it off?

A. No, sir; I did not.

Q. How much did he speak about that?

A. Two or three times. Also, another lady that was there, whose dress was trimmed with steel buttons, he said to her, it seemed to take from him.

*Cross-Examination, by MR. PRATT.*—Q. How did you find Mr. Hawes situated, when you first went there, Mrs. Parker?

A. I found him sitting there, and that he had nothing to eat or drink.

Q. Was there any one in the room with him?

A. When I went there, Mrs. Ober went with me in the morning. In the afternoon, I don't think there was any one in the room; I could not see any one but Mr. Hawes.

Q. The time you went into his room was in the evening?

A. In the afternoon, between the hours of two and three.

Q. You found him alone then, in bed?

A. Yes, sir.

Q. Was he quiet; at rest?

A. He seemed to be suffering a good deal from a raising.

Q. From what?

A. A cough and raising; he seemed to be in a great deal of distress from the lungs.

Q. He was quiet and calm at that time, except from physical pain?

A. Yes, sir, for a little while; then he would commence to talk about his wife.

Q. How long did he remain in that quiet condition?

A. About half an hour.

Q. After you left?

A. Yes, sir.

Q. What did he say to you after you first went into the room?

A. He asked me how I had been nursing, what I knew about nursing; what I knew about bathing; then he said, "That is all to be proved."

Q. Did he ask you any further questions?

A. He asked me some questions about nursing; what I had done at nursing; if I had ever taken care of a gentleman that was sick before.

Q. Did he examine you pretty thoroughly in regard to all your qualifications?

A. Yes, sir.

Q. Did he say anything to you about the length of time you should serve, and the terms?

A. He said he would like me to stay as long as I lived. I told

him it was impossible, as I had other engagements, and expected every hour to be called away. I went merely to oblige him.

Q. Did he ask you what pay you expected?

A. He asked me what I had a week, and I told him.

A. He made these inquiries right along, one after another, did he?

A. Yes, sir, the first day I was there.

Q. At what time on that day, did he begin to be restless and nervous?

A. About half an hour after I went there.

Q. Had you given him any medicine in the meantime?

A. He took some medicine that some physician had left for him, out of a bottle; but I could not tell you what it was; something to make him expectorate freely. He also took a gargle.

Q. Do you know who the physician was?

A. No, sir; I do not. He told me he had had several physicians, and none of them knew as much as himself.

Q. You sat up with him all night, that night?

A. Yes, sir.

Q. You say he didn't sleep until from four till six?

A. From four to six; not at all, until then.

Q. How long had you been there before he commenced to talk to you about his wife?

A. A very short time; almost as soon as I went there.

Q. You replied that, that you didn't want to know anything on either side.

A. That I didn't want to know anything on either side of the house.

Q. He said you were right about that?

A. He said it a second time over: "You are right; you are right."

Q. Then did he after that begin to talk to you about her again?

A. Yes, sir; several times. I asked him if his wife was not a good woman, and he said she was smart; and prefixed it with an oath.

MR. BARNES—Q. Just state what he said.

A. He said she was "damned smart."

MR. PRATT—Q. Did he manifest any impatience with you when you told him you didn't want to hear of his family troubles?

A. No, sir.

Q. On the contrary he seemed rather pleased at the view you took of it?

A. Yes, sir.

Q. When he commenced to talk to you again on that subject, did you again decline to express yourself in the same way?

A. I talked with him. Then I put the question I just told you—if she was not a good woman.

Q. He made the reply which you have stated?

A. Yes, sir; he told me what she was good for.

Q. Did the conversation stop there about her?

A. He mentioned her several times.

Q. That conversation, did he then stop?

A. Yes, sir.

Q. Then, after an interval of some time, he spoke of her again, did he?

A. He spoke of his will. He said he was not going to will her anything.

- Q. Did you make any response or inquiry about that, or after it?
- A. I only asked him if she would break the will.
- Q. And he made the reply which you have already given?
- A. Yes, sir; that that was all fixed.
- Q. Then that conversation stopped again?
- A. Yes; he went off to something else. He spoke of a "sick chair" which she had bought for him, and he had a good deal to say about that.
- Q. What about that?
- A. He said it was not a suitable chair for a man in his standing to sit in.
- Q. Did he still again renew the conversation about his wife?
- A. In regard to the chair he did; yes, sir. He spoke of her several times. I cannot now tell you every word he said; but several times in the night. Once or twice he told me to call her for something in the evening.
- Q. Did you call her?
- A. Yes, sir. Once he said: "Call Mrs. Hawes!"
- Q. Did she come?
- A. Yes, sir.
- Q. What did he want of her?
- A. To clean his teeth.
- Q. Did she do it?
- A. Yes; he told me that was all she was fit for.
- Q. Did he use any abusive expressions to her while she was there?
- A. No, nothing more than speaking out sharp to her.
- Q. Did he say that in Mrs. Hawes' presence, that that was all she was fit for?
- A. No, sir; after she went away. He said he didn't wish me to do it.
- Q. You stated that he seemed to dislike Mrs. Hawes intensely?
- A. Yes, sir.
- Q. Had you any other reason for arriving at the conclusion than the facts you have already stated?
- A. His manner; and also I was told before I went there there was some trouble between them, but was not told what it was.
- Q. The facts which you have stated then, and the manner in which he spoke of her and about her, were the reasons for your concluding that he hated her intensely?
- A. Yes, sir.
- Q. In this matter he spoke something about divorce?
- A. Yes, sir.
- Q. You understood from him, didn't you, that what he desired was that she should get a divorce?
- A. Yes, sir.
- Q. And that he would give her one hundred thousand dollars if she would get a divorce?
- A. Yes; that is what he told me.
- Q. When he told you that he first began to dislike her because she refused to take proper care of his child—
- A. Refused to nurse his child.
- Q. That was the expression he used, was it?
- A. Yes, sir.

Q. Did he say anything else in that connection, as to the care of the child?

A. No, sir; he did not. He said she was not a competent woman to take care of the boys—that was why he sent them away—but that if I would stay, he would send for them to come home.

Q. Did he say Mrs. Hawes was extravagant in the expenditure of money?

A. He said he would give her money, and she would buy candy with it. She asked him for some money, for she was going to Redwood, and she had nothing to live on at the house. He told her there was a cow, and she could live on that.

Q. Was that while you were there?

A. Yes, sir; Saturday evening.

Q. Was that all the reply he made to her?

A. Yes, sir; that was all the reply he made. After she was gone, he said to me, "She is a smart woman." He said "That is where the trouble is."

Q. You say he cursed occasionally, and used profane language?

A. Yes, sir.

Q. Did you remonstrate with him about that?

A. I told him I did not like to hear it. He would calm down a few moments, and then start up about something else. He spoke about his monument; he was going to be buried at Redwood City, as it was the only fitting place for his bones to rest.

Q. He always complied with your wishes, whenever you expressed them?

A. Yes, sir.

Q. You went away because you was called to another engagement, did you?

A. Yes, sir.

Q. After having stayed there how long?

A. I went one day between two and three and left at six the next afternoon—went the thirtieth and left the thirty-first.

Q. When you went away then, you left him in the house entirely alone?

A. I left him entirely alone, with the exception of the clerk in the office. He was counting over some money on the bed when I left. He had sent a check for one hundred dollars, and they gave it to him all in silver. He was making the boy count it over.

Q. How old a boy?

A. Somewhere about twenty—a dark complexioned boy. I don't know who he was. He had three small boys there.

Q. He swore at you some when you went away, didn't he?

A. No, sir; he said it was all a contrived plan between Mrs. Hawes and myself to leave him alone.

Q. Was that about all he said upon that subject?

A. It was about all. If he had known I was going away—it was about all—if he had known I was going away, he should have kept her there.

Q. About this loan of a dollar; did he ask you for it?

A. He asked me for it; yes, sir.

Q. Did you ask him to repay you?

A. No, sir, I did not. I told him I had only a two and a half piece. He said he was out of money—he had none to his name. I don't think he had, either, until he sent out and changed his money.

Q. Before the boy brought in the hundred dollars, do you speak of?

A. Yes, sir.

Q. Was the barber there seeking his pay? Had he sent in his bill?

A. The barber was there. He did not pay him over four bits at a time, but he wanted to give him four bits for a Christmas present.

Q. He had none, and asked you for it?

A. Yes, sir.

Q. Did he pay you for your services there?

A. No, sir. It was not mentioned then, nor afterwards. Only he sent for me, to see him about my going to the islands with him. So far as his wife was concerned, he said all that he wished, was to be rid of her; to get her out of the way.

Q. Did he say anything about her disturbing and annoying him by her presence, and wanting her away, that he might rest?

A. He disliked her so much, he did not want her in the house; he didn't wish her. Still he said, had he known I was going away that night, he should have retained her there, rather than to be left alone.

Q. If he had known you were going away, he would have retained her there, rather than to be left alone?

A. Yes, sir.

Q. Did you bring him his food during the time you was there?

A. Yes, sir, I did.

Q. How did his appetite seem to be?

A. He ate very heartily.

Q. He ate very heartily?

A. Yes, sir.

Q. Invariably, did he?

A. He ate somewhere about six times in the course of a day, something. He did not always eat heartily every time. He took cracker and tea—something of that kind.

Q. Did he say anything to you about not having a sufficiency of food?

A. No, sir; he did not.

Q. Anything of the want of care or attention?

A. He did not say he had suffered from the want of it; but that he needed something for his comfort. I suggested that he send out to buy them, but he said no, he could not afford it.

Q. Did he direct you to bathe him with warm water?

A. Yes, sir; with two separate dishes of water; to wash the disease off with one, and with clean water in another.

Q. Did he direct you in detail how to do it?

A. I told him I knew all about bathing, and he said he would see how much I knew.

Q. Did he order whisky, also?

A. Yes, sir; and cod liver oil, also, to be rubbed in, as his stomach was weak, it could not bear it.

Q. All these instructions he gave you?

A. Yes, sir.

Q. Was he perfectly satisfied?

A. He was perfectly satisfied with everything I did.

Q. Did Mrs. Hawes spend much of her time in the room with you while you were there?

A. Not any, unless he asked for her.

Q. How many times did he send for her?

A. Well, I don't recollect every time.

Q. Did she administer any medicine, or give him any food, while you were there?

A. I don't think she did. She came there with it, and I brought it in.

Q. Did she do anything for him except cleaning his teeth?

A. Yes, sir; she washed his back.

Q. Did he request her to wash his back?

A. He wanted me to bathe him *there*, and I told him I objected to do it, and he told me to call Mrs. Hawes.

Q. Did he tell you, in speaking of religion, what his present convictions were?

A. No, sir; he told me he was a Presbyterian—brought up in that belief—in fore-ordination; that when a man was born, his destination—whatever he was destined to be, so he became. If destined to become wealthy and great, he would become so. He said he was one of the greatest lawyers California ever produced.

Q. Did you ever see him any time except this period?

A. Yes, sir; I saw him twice afterwards.

Q. When?

A. I couldn't tell you. I was away nursing, and called when I had an opportunity. Once—the third week in June—he sent for me to see about going to the islands.

Q. He sent for you?

A. Yes, sir. He had had Dr. Blake, and he had recommended a trip to the islands. He wanted me to go to the boat and have two staterooms prepared, and to go out and buy all the necessities we would require on the voyage. I said, "Where will I get the money?" He said, "Take your money, and I will settle with you for it." I refused.

Q. Did he want you to go with him to the islands?

A. Yes, sir.

Q. How did you find him when you went there on this first occasion?

A. More quiet than before. His wife was not there.

Q. Was he lying in bed, as formerly?

A. Yes, sir.

Q. Was there any one with him?

A. He had then a little boy in the office or in the sitting room.

Q. How long did you remain with him on that occasion?

A. An hour and a half, I suppose.

Q. Did he talk pretty much all the time you was there?

A. Yes, sir.

Q. Any other subject than the trip to the islands?

A. No, sir; that seemed to be the main thing. He thought if he could go there and get back again it might prolong his life a number of years. He was very anxious to go. He said that on the trip to the islands he should take every convenience for preserving his body, so that he could be buried at Redwood.

Q. How long after that was it when you made your last visit to him?

A. I could not tell you. I think it was four or five weeks from the time I left him. I couldn't specify that, because I was away nursing.

Q. About how long? You think about four weeks after nursing him?



A. Between four and five weeks after I left him; I was in there only twice, once to see him about the islands, and one other time just to see him, and saw him alone.

Q. Did you state what time you first went there?

A. The 30th day of December.

Q. About between four and five weeks after that, was the last time you ever saw him?

A. Yes, sir; four or five weeks after that. He was riding out in his carriage one day, but I did not speak to him.

Q. Did he recognize you?—bow to you?

A. Oh, yes, sir. I was in the cars, and he in a carriage, and I bowed, and he touched his hat to me.

Q. How did you find him situated, the last time you was there?

A. He told me he did not suffer as much as before with his lungs, but he did not rest as much. Some physician had told him it was a good symptom, but he knew it was not, and he was near his end.

Q. How long did you remain there on your last visit?

A. I suppose an hour or so—perhaps longer.

Q. Was any one in the room with you?

A. Mrs. Ober came before I went away, and brought him a paper of crackers. He was alone, and I asked him if I should not make up his bed, and do something for him to make him more comfortable. He said a little boy did everything for him.

Q. Did he talk very much on that visit?

A. Yes, sir, he talked very much. He was a great talker.

Q. What was that conversation about, principally?

A. About the last time I was there?

Q. Yes, sir.

A. About my going to Redwood when the house was finished, and staying there as long as he lived. He would give me a suite of rooms.

Q. He seemed to be calm?

A. Yes, sir, he seemed to be quite calm.

Q. How long had you been there, when he made this proposition about marriage?

A. Well, not a great while. He did not make a proposition of marriage. He said he would put me in Mrs. Hawes place. His ideas of marriage were very curious—more of free-loveism than any thing else.

Q. You did not understand, then, that he proposed to marry you?

A. No, sir; he told me that if he had a divorce from her, he could put me in her place, and make me comfortable, so that I would not have to labor for everybody.

Q. What you understood him then, was simply that he was pleased with your manner of taking care of him—is that it?

A. He said he was not only pleased with my care, but with me, more than anybody he had ever known.

Q. You did not consider that an evidence of insanity, did you?

A. I don't know, I am sure; the way he ran on on different things, I considered he was insane.

Q. I believe you told Mr. Barnes, in that respect, you thought his mind was not always right—something wrong?

A. No, sir; I didn't think it was always right; I said so to him. He ran from one thing to another so fast.

Q. But while he continued to talk on each particular subject, did he talk reasonably?

A. Well, on most things, with the exception of when his wife was mentioned, or anything in regard to his burial. One moment it would be about his being buried at Redwood, and a monument hewn out of solid stone, so that he could be put in and sealed up, and nobody else in sight of him; that there was no other fit place for his burial. He appeared to have a very excellent opinion of himself.

Q. Well, speaking of his having been out on the porch in the morning, after that restless night—he had been talking all night—

A. [Interrupting.] He stayed out on the porch some time, and went to ride that day.

Q. He stayed out on the porch some time and went to ride?

A. Yes, sir.

Q. Did you have much conversation with him that morning?

A. Well, I talked with him all the time he was being dressed, and assisted him to the porch. I sat him in the chair. There were one or two persons who went to see him when I was there, and I went into the house and returned after they had gone.

Q. Did he propose to go out on the porch himself, and ask you to assist him?

A. Yes, sir; he wished for a plenty of fresh air. He wanted to do everything he told me to prolong his life.

Q. When you told him on the porch you did not think his head was right, did he reply to that?

A. I said he was not right in the upper story. He put his hands here, [witness placing hands to her head], and I said, "Yes." He said, "You are right; it has not been for four or five years." I was not aware before that that he had been sick so long.

Q. Was that all that was said on that subject at that time?

A. About his not being right?

Q. Yes.

A. Yes, sir; I think so.

Q. How long did he remain upon the porch?

A. From one to two o'clock. I took him out something to eat that they had there; some crackers and a cup of tea.

Q. Did he assign to you at any time any particular reason for his desiring to live?

A. To see his boy in his place. That is why he wished his life insured for ten thousand dollars, if he could get it, till his boy was of age.

Q. He never manifested to you any fear of death, because it was death, did he?

A. No, sir; he did not. He asked me if I believed anything in spiritualism—if I thought spirits ever came back to this world. I told him there might be cases. He said he should come back and know everything that was going on. Speaking about his property he told me on his place at Redwood I could ride for twenty miles and keep on his ranch all the time, it was so valuable.

Q. Was there any particular reason, Mrs. Parker, for your going away without asking for compensation?

A. Well, there was not any particular reason. He was counting the money, and he was so perfectly furious because I was going to leave, that I thought I would rather go without my pay than have any words with him.

Q. I would like to have you state the entire conversation, if you can, in regard to those steel buttons?

A. I had on a sontag, and it was trimmed up the front with steel buttons. He told me he would like to have me take it off, as the buttons drew from brain—took from him all the time—drew from his brain—he felt the life going out of it. It was very warm, and I told him I could not take it off, as the room was very cold.

Q. Did he say anything further about it?

A. He waited several moments and said he could still feel it, and spoke of it several times again.

Q. Did he become excited?

A. Not at all; he seemed like a child—perfectly willing to do anything I asked him.

Q. Do you know of his transacting any business while you were there?

A. No, sir; I did not. He told me of his place he was building at Redwood. I didn't know of his transacting any business while I was there—I could not say.

Q. Do you know of a gentleman that called on him while you was there?

A. No, sir; I didn't know any of them by name.

Q. Were there many visitors during the time?

A. Three or four gentlemen called while he was out on the porch, and there were some ladies called. He had sent out, it seems, for a cook, and three or four Irish cooks came to see him about cooking.

B. F. COLBY called for Contestant.

*Examined by MR. BARNES*—Q. Do you live in San Francisco?

A. Yes, sir.

Q. You are a builder and contractor by profession?

A. Yes, sir.

Q. How long have you been living here, and in that business?

A. Nine years and a little over.

Q. Did you know Horace Hawes in his lifetime?

A. I did.

Q. Did you have business with him?

A. I did.

Q. What was it?

A. Superintendent of the construction of his dwelling house at Redwood farm.

Q. Were you at his house any evening in the month of February, 1871?

A. Yes, sir; I was there every Saturday evening for four or five minutes.

Q. Do you remember one of these evenings when you had a conversation, that something transpired in respect to the articles—about the things that he had?

A. Yes, sir.

Q. Won't you state what that was?

A. The only occasion when I was there, one Saturday evening, he called the nurse that he had and asked her to fetch him a package of medicine. He told her that she would find it lying on some coral—that lay on the table on the coral. She went there and looked for it, and it was not on the coral, but it was along on the window-sill near by, and he asked her to bring it to him. She did so, and he asked her to smell of it. She smelled of it, but she could not smell anything. He

took it and looked at it, and said it had evidently been tampered with, and asked her to pass it to me. She did so. I took it, and I could not smell anything from it; and he said that his suspicions had been aroused during the last week; that he had had all of his wines emptied out, and that his medicines had been tampered with; and he told her that she must throw it into the fire and burn it up; he would not take it.

Q. What did he mean by being tampered with?

A. Well, I suppose that he meant somebody had been mixing something with it, or doing something to it. That was the expression he used.

Q. Did he say anything in relation to this stuff having been tampered with in connection with anybody, or in such connection that you understood what he meant?

A. I thought I knew what he meant. I know his wife had been there during the week, as he stated his suspicions had been aroused during the week.

Q. Do you know Mrs. Hawes had been there during the week?

A. I know she had been there during the week.

Q. And you understood his suspicions had been raised towards her?

A. I did so understand it.

Q. What was his manner and demeanor while this was going on?

A. It was rather calm—not particularly excited.

Q. Did he appear to believe what he said?

A. Yes, sir.

Q. Do you know what this package was?

A. It looked like sugar.

Q. What did he say had been done with it?

A. He did not say what—"tampered with," that's all.

*Cross-Examination of B. F. COLBY:*

MR. PRATT—What time in February?

A. I could not fix the time, sir. I was there every Saturday evening for six months. I came up to report proceedings there—it was one of those Saturday evenings. It must have been in the month of February, I should think.

Q. In the forepart of the month; do you think it was before or after the middle?

A. Well, I should think it was about the middle of the month.

Q. One Saturday, you think, about the middle of the month of February?

A. Yes, sir.

Q. Have you any memorandum or anything by which you can refresh your memory so that you can fix the date certainly?

A. No, sir; I have not.

Q. When he told you he had had his suspicions aroused within the week, did he tell you what had created these suspicions in his mind? Did he state any fact or circumstance which made him suspicious?

A. No, sir; nothing more than that he had his suspicions aroused and had had his wines emptied out, had the sugar burned up—would not take it.

Q. Did you go there on that evening on business with Mr. Hawes?

A. Yes, sir; on business every Saturday evening.

Q. What was his physical condition that night?

A. He was rather low.

Q. Lying in bed ?

A. Yes, sir.

Q. Able to get up or move about ?

A. He was not up much at that time.

Q. Did you transact your business with him ?

A. I did.

Q. What was your business with him that evening ?

A. I fetched in my report of progress of the building—what had been done during the week.

Q. Did you present him a detailed statement of all the work that had been done on the building ?

A. Yes, sir; I reported every week.

Q. The expenditures and the men ?

A. Yes, sir; and the items. He was very exact about it, too.

Q. Was that an items account, or statement ?

A. It was.

Q. How many items were included, probably ?

A. Probably fifteen to twenty.

Q. An item account and also a report of what had been done ?

A. A complete report of every day's work, every man's name, and all the materials of every kind that was used every week.

Q. Did he examine the report in your presence ?

A. I read them to him, and then left them until the next day. He examined them during the time.

Q. Did he ask you any questions—make any inquiries about the items ?

A. I don't know that he did that night; he usually did.

Q. You continued to go there every Saturday night, up to what time ?

A. Until he died; as long as he lived.

Q. You always presented to him your report in the same manner ?

A. Yes, sir.

Q. Did he always require you to read it over to him ?

A. Yes, sir.

Q. Did he usually, in examining the report, ask you questions ?

A. I always left it with him Saturday nights, and went Sunday to get the pay to pay the bills.

Q. You were there the Saturday night previous to his death, also, were you ?

A. I was.

Q. Do you know on what day of the week he died ?

A. I think on the twelfth of March.

Q. Of the week ?

A. Sunday.

Q. You were there the Saturday night before ?

A. Yes, sir.

Q. Did you see the nurse that night ?

A. The last night ?

Q. Yes, sir.

A. I did not go into the room that night; he was too feeble. I left my report and went Sunday morning, and he had signed the checks Sunday morning.

Q. Do you know whether he had examined the report then or not ? Did he examine it in your presence ?

A. He did not, in my presence. I understood that Mrs. Hawes read it to him.

Q. When did you first become the superintendent of this building?

A. I commenced as the superintendent of it on the sixteenth day of January.

Q. On the sixteenth day of January?

A. Yes, sir.

Q. Last January?

A. Last January.

Q. Did you find in all your transactions with Mr. Hawes, that he was correct and accurate?

A. I did, sir.

Q. Wasn't he remarkably and extraordinarily careful and exacting in his business arrangements?

A. I should say he was.

Q. Without change from the first up to the last?

A. Yes, sir.

REV. JOSEPH A. GALLAGHER, called for Contestant. Sworn.

*Examined by MR. BARNES.*—Q. What is your occupation?

A. I am a Catholic clergyman.

Q. Did you know Mr. Hawes in his lifetime?

A. I did.

Q. During the year 1870, this past winter, did you know him?

A. I did.

Q. Where was he living then?

A. I saw him at his house; at his house in Folsom street.

Q. How long had you known him?

A. I think that I was introduced to him in 1862 or '63, I am not sure which.

Q. Your acquaintance with him then dates from about that time?

A. Yes, sir. I was intimately acquainted with him in Sacramento, in 1864. I was living there during the session of the Legislature; he was a member of the Senate from here; and from that time forth I have known him very well.

Q. During the fall and winter of 1870—this last summer and last winter, how often did you see him?

A. I could not say; I saw him several times; probably twenty or thirty times.

Q. Where were you residing at that time?

A. Tenth Street.

Q. Connected with that Tenth Street church parish?

A. Yes, all of the time.

Q. Did he come to your house?

A. No, sir; not after he got back from Europe; he did before he went away.

Q. He did before he went away?

A. Yes, sir. When he came back, I went to see him the first time after he came back.

Q. He used to visit your house before he went to Europe?

A. Yes, sir.

Q. What for?

A. Sometimes to get something to eat. Sometimes I sent the servant there with things to his house before he went to Europe. He was sick there for some time. I did not know it until one day I got a



letter from the Archbishop, telling me to go. Then he moved from there to North Beach, somewhere near Powell street. I forget exactly the street—two streets beyond Green and Francisco, or something like that. I went there to see him, and visited him again, and Mr. Durkin was there with him.

Q. Who?

A. Mr. Durkin.

Q. The witness on the stand here this morning?

A. Yes, sir. He was then very anxious to get some place to go and stop for a time, and I suggested to him St. Mary's Hospital. He agreed to it. He wanted a room with a stove and fire in it. I went there and had all of the arrangements made for him to go, and then he would not go.

Q. Why not?

A. Well, he said he would not go there. He spoke of half a dozen places; and then said he was going to Europe, and to Rome; and he got letters of introduction from Father Croke, who was then here.

Q. Did he have any conversation with you about his family?

A. Sometimes.

Q. What was that?

A. The only conversation was that he remarked one day that Mrs. Hawes was wrong. There was one opportunity of getting her right, and Father Hugh didn't do his duty; "he did wrong in permitting her taking sides with him against me."

Q. Did he ever say anything to you, asking you for food when he came to your place?

A. Not before he went away. When he came back he sent for me. The first I saw of him. He went then to Redwood City and had that famous law suit about a grocery man, published in the papers here, and then he came one day to town, I think it was in September—late in September; and he sent for me; he sent word by some boy to come right away; that Mr. Hawes wanted me. When I went over there he was in front of the house moving up and down, and he looked up to me, and he looked perfectly like death. He says: "I am starving. Here I am, sir," he says, "a rich man and starving. I can get nothing to eat." I said: "You cannot starve, sir;" and I went over and ordered a meal sent over to him. And the next day he said he was very much pleased with the mutton-chops, the baked potatoes, and that the tea tasted very sweet. Then he said to me: "I want to get two furnished rooms; fine airy rooms facing the sun;" and said he: "Could you get them for me?" Said I: "It is not my business, Mr. Hawes, but I will do anything for you I can." I went and got two rooms this side of Ninth and Folsom, and he wanted to go over there with me to look at them; and he suggested half a dozen things to the man's daughter, about cutting a door here, and making a porch there, and all that that would be entirely impossible. Then he says: "Could not I get into that house at the corner of Eleventh and Folsom?" Said I: "Mr. Adams and family live there." "Couldn't they give me two rooms?" he says. Said I: "I think not." "The next house to that," said he. Said I: "No, Mr. Porter(?) is living there." Said I: "these are all private residences." He said he didn't see why anybody in town should not give him those rooms. He had done so much for them they should almost abandon their houses for him. I tried again, and I told him, said I: "I cannot get any rooms for you, Mr. Hawes."



I went in and told Mrs. Hawes, and she said it was of no use, "you could not please him; there are half a dozen looking after rooms the same as you." I had a great deal to do then; had a number of children to prepare for their first communion, and I could not leave my business; but any time he would send to the house I would give anything he wanted.

Q. To what extent during the fall of 1870 did you supply him with food?

A. It was not much; he seemed to get a little offended because I didn't go there all of the time, and so bought it himself. He sent then down to the restaurant. This lasted about a week.

Q. You mean this time he told you he was starving?

A. Yes, sir.

Q. How long following that did you supply him with food?

A. I know once or twice when the cook left, he sent word over that he wanted something. He was not able then to leave the house, except once or twice with a carriage. One day I think I saw him walking in front. He told me after he came back first, what he saw abroad.

Q. What did he tell you about that?

A. He said the French were the greatest set of robbers, from the Emperor down to the very lowest man there, and the hotel keepers particularly, and the carriage men; that they would rob any man. But he said: "I may not live to have revenge upon the French nation; but Horace, my son, will live, and he will have revenge of that proud, that robber nation."

Q. Was there any other occasion except the one you have mentioned, when he told you that he was a rich man yet was starving to death for the want of food?

A. I think there was two or three times; but this one time was very remarkable. He was after coming from Redwood City. I believe the man was hungry; he looked like it.

Q. Can you fix the other times when he told you he was starving?

A. It was subsequently to that; two or three times; occasionally when I visited him; I went out sometimes to see him.

Q. When he told you at these subsequent times he was starving, was there any request from him coupled with it?

A. No, no; no request. Yes; the request was to get him a first-class cook. He asked me, I suppose, seven or eight times to get him a good nurse, and a first-class cook. Said I: "What can a cook do here, Mr. Hawes, there is nothing here but a grate, and you cannot expect a first-class cook to cook over a grate in that way." He wanted a first-class cook. The Archbishop and I visited him one day, one Saturday, and he said he was going to build a kitchen, get a stove into it and have it all furnished. I went back in a few days to find out about the kitchen; and I found out from Mrs. Hawes he had cashed the whole thing up and found it amounted to one hundred and twenty dollars, and he would not do it; it was too expensive.

Q. Had he at this time any place for cooking in the house at all?

A. Not at that time; I think the stove was put up in the back room afterwards; a little back room. But at this time there was nothing but a grate, and in his own room.

Q. Now do you know whether or not such food as he had was cooked on that grate in his room?

A. It was a part of the time, yes, sir. The servants there told me when I got there—

Q. Did you ever get him any servants?

A. I tried to get him one before this person came; she was a matron or nurse in the hospital; she was about going there but was called away to another place.

Q. Did he ever say anything to you on the subject of his being afraid of being hurt or injured in any way, by any individual?

A. He said he was abandoned by all; he had no friends on earth; that every person seemed to give him up; that those that he had been friendly to had all deserted him. I don't think that he mentioned that he was afraid of his life.

Q. Did he ever send for you at any unusual hours, or to your house?

A. Yes, he sent for me at night to come and see about getting some persons to stop with him all night.

Q. What time did he send there?

A. Between eight and nine o'clock.

Q. That is in the evening?

A. Yes, sir; between seven and eight.

MR. BARNES—Q. Was he alone at such times?

A. This was a day or two after he came from Redwood City. I went there to see him—

Q. Where did you find him?

A. Sitting up in his room.

Q. Anybody with him?

A. Yes, sir; when I— no, I went back to get a young man in our house to stay up all night; and when he came there, Mr. Durkin was there, and he said he would stay with him all night.

Q. You went away, and left Mr. Durkin there?

A. No; this boy did.

*Cross-Examination, by MR. PRATT—Q.* When did you last see Mr. Hawes to have any conversation with him?

A. I suppose every two weeks before his death.

Q. Every two weeks before his death? Up to that time had you seen him very frequently?

A. Yes; oftentimes I did not see him. I called and asked for him.

Q. Your relations with Mr. Hawes were friendly and intimate from the time you knew him in Sacramento in 1864 up to the time of his death?

A. Always.

Q. About how many times, as near as you can approximate, did you see Mr. Hawes to talk with him after his return from Europe?

A. I stated before, about thirty, I should think; probably more, or less. It is impossible to give an exact account of the number of times a person would call; near that.

Q. Did all of those interviews take place in the city, or some at Redwood?

A. I was never at Redwood.

Q. You was never at Redwood?

A. I was there; but never when I saw him there.

Q. These interviews were usually at his house, or yours?

A. His house, always; never at our house since he returned from Europe. He was not able to come up there at all.

Q. How long would these interviews usually last between you and him?

A. Well, sometimes we would talk a good deal—ten, fifteen, or twenty minutes; sometimes only two or three minutes—to ask him how he was, and go away. I was always glad to get away.

Q. During all of this time he never made any complaint to you about his wife?

A. No.

Q. In any of these conversations, did you and he talk about his religious condition—or spiritual welfare?

A. Never at all. He mentioned himself once that his mind—before he went away? Yes.

Q. Before he went away, he did talk to you about his religious condition or his spiritual welfare?

A. Yes, sir. He had read a great many books, and asked me what books he would read, and I gave him directions, and he was perfectly astonished that any reasonable man could be anything else but a Catholic. He said there was nothing stable and firm—our Government itself was all on a false foundation—there was nothing stable but the Catholic Church.

Q. You spoke of having arranged at one time for him to go to the St. Mary's hospital; that was before he went to Europe?

A. Before he went to Europe.

Q. Did he ever, in any of these conversations, tell you what disposition he intended to make of his property?

A. Yes, sir; before he went to Europe he did. He mentioned about his intention to found—to develop this plan here about this Chamber of Industry. He could not give me much idea of it; but it was to procure work for any people that were willing to work. He told me this at our house before he went away; after he came back he said nothing about it.

Q. Did he consult with you about this plan or scheme; or ask your advice or opinion at all?

A. No, he merely told me about what his intentions were.

Q. When did he first speak to you of intending to found any public or charitable institution?

A. It was about, I suppose two or three months, before he went to Europe.

Q. When he spoke to you on one or two occasions about starving or being hungry, in the same connection he requested you to get him a good cook?

A. Yes, afterwards; he first wanted a house or rooms, then he wanted a good cook, then he wanted a good nurse. He asked me—he had tried two or three cooks and discharged them in the night. He told me: "Now get me one good cook and nurse, and I will keep them as long as I live." Others were got, and they stayed as long as the rest, or I believe about ten or eleven days was the usual time they stayed.

Q. All of these conversations; all of these complaints as to servants were in the period of two or three weeks, were they not?

A. Oh, no.

Q. Over how long a period?

A. From the time he came down, I think in September, about the latter part of September, all down to January last.

Q. From the last of September down to January?

A. Yes, sir; even in January, I think some parts of it.

Q. Do you recollect distinctly, Father Gallagher, what transpired at your last interview with Mr. Hawes?

A. I do, very well.

Q. First, how long were you there on that occasion?

A. About a minute and a half.

Q. I suppose you would not have much trouble in recollecting what transpired in that time.

A. He was up in the bed, propped up, and had some writing, and was looking over it. He told me he was very weak; that I might talk as much as I pleased, but he would not be able to answer me. I took the hint, and made my talk very short.

Q. Did he tell you that he had no stove in his house?

A. No. It was evident that he had no stove. This was not a house. His house was not adjoining—this was his office and library, and he never had lived there in the library before, except to come down to spend the night, and go away again. It was never intended for a residence. There was one room, his library, and one room, his bedroom, and there was a small room back of it for, I think, the servant, whoever was there. There seemed to be no place for a fire, if I remember right. I think there was a place for a fire in the office; and there was a grate in this room he slept in most of the time, and on that grate they had to cook.

Q. Did he tell you how it happened that he was there alone at his house on Folsom street, when he first came there?

A. He said he came down from Redwood City; that he was abandoned by all the world—they had all abandoned him. He said, "Here I am starving; can't you give me something to eat?" I said, "Certainly."

Q. He didn't tell you the particulars, only stated generally what you have said?

A. Yes.

Q. He never requested you to see Mrs. Hawes, to have any interview with her on his behalf?

A. No, he never mentioned that only once, and that was shortly before he went to Europe.

Q. Did Mrs. Hawes ever seek your assistance in any way, in connection with him?

A. No, sir. She sometimes complained that he was generally very hard to get along with.

Q. Father Gallagher, what was the intellectual standard, the general capacity of Mr. Hawes?

A. Mr. Hawes, I looked upon when he was—considered himself, I think he was a man of very fair, good mind, a fine statesman head. I could see by his look, etc. I had a very high opinion of him.

Q. What was his disposition and temper?

A. Always irritable; far more with others than with me. He never manifested anything like vexation with me. I could contradict him, ask him questions at any time, and he would reason with me; but I found he never would with anyone else, excepting brother and one or two more; and he never used any profanity with me.

Q. He had a great deal of vindictiveness?

A. Yes, sir; a very great deal; that seemed to be in him always. I have seen instances of that in his Senatorial career.

Q. At the same time, he was capable of great generosity where the public was concerned?

A. I believe so.

Q. Do you know what his habits were with reference to his own personal expenditures in life?

A. I think I do. My candid opinion is that he starved himself to death; or at least brought on disease by starvation.

Q. He was exceedingly parsimonious?

A. He was exceedingly parsimonious, I was told by persons that knew him in Sacramento. He had a room, it is true, but would go to one of the meanest restaurants in the city, and get a breakfast for twenty-five cents.

Q. What was his sense of honor personally—honor and integrity?

A. Well, really I could not say about that. A man that had such bitter hatred it was very hard to judge of his sense of honor, because even at the best of times this bitterness would carry him, sir, to my own knowledge, beyond all limits in judging of persons. I have heard him denounce men that I knew to be good as the greatest scoundrels that ever were.

Q. These were his characteristics when you first became acquainted with him, were they not?

A. No; it was lately. At the very first he was vindictive, but it was calm and cool. I have seen him in the Senate going around a good ways to get a rap at another Senator, to show his vindictiveness.

Q. As his disease grew upon him, he became more bitter?

A. Well, with any person who differed with him.

MRS. HELEN POTTER called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. How long have you resided in San Francisco?

A. About thirteen years.

Q. Where did you reside in the year 1870?

A. In San Francisco.

Q. Whereabouts?

A. On Geary street.

Q. Did you know Mr. Hawes in his lifetime?

A. I did.

Q. For how long a period next preceding his death?

A. Did I know him? I have known him between two and three years, slightly—three years.

Q. Did you know Mrs. Hawes?

A. I did.

Q. For how long a time?

A. Rather longer than I had known Mr. Hawes.

Q. Did you visit Mr. Hawes' house in the latter part of 1870—last year?

A. Yes, sir.

Q. At what time? Do you remember when you went there?

A. It was in December.

Q. For what purpose did you go there?

A. To call upon Mr. Hawes. He sent for me.

Q. He sent for you, and wished you to call upon him?

A. Yes, sir.

Q. When you went there where did you find him?

A. I found him in his bed room—his sleeping room.

Q. Back of the office, in that part of the house, or in the main part of the house?

A. In the wing, the front part of the wing.

Q. Did you hear the testimony of Mr. Gallagher, who was just on the stand? It was in the wing to the west of the house, wasn't it?

A. It was the room off from the library.

Q. Was Mrs. Hawes there?

A. She was.

Q. After you arrived there, shortly after you got there, did she go away?

A. She went out soon after I went there.

Q. Do you know what she went for?

A. She told him she was going to see if she could get a nurse.

Q. While she was out, did you have any conversation with Mr. Hawes?

A. Yes, sir.

Q. How long did it continue?

A. I went there I think about two o'clock in the afternoon, and I remained there until about half past four or five.

Q. Now, won't you go on and state as precisely as you can, and in its consecutive order, what occurred between you and Mr. Hawes during Mrs. Hawes' absence?

A. I remember that he asked me to bathe his head after she had gone away. He complained of having a headache, and I was—when I first went in, Mrs. Hawes asked me how long I could remain. Mr. Hawes said: "Don't trouble yourself about that; Mrs. Potter has not been here long enough to rest herself." She said she wished to go away and she would be gone two or three hours, and wanted to know if I would remain as company for Mr. Hawes; she did not like to leave him alone. I do not remember anything particularly that occurred in the course of the afternoon, excepting that after a short time I asked when he thought she would return, and he said he thought she would not be back for some time; that she probably would have a great deal to do; that she would probably go the rounds before she returned. I said I did not care as long as she was back in time to go to dinner. I don't recollect on the first day any conversation more than that.

Q. How long did you remain there?

A. I remained there until about five, or nearly five o'clock.

Q. Did you go there again?

A. Yes, sir. I went there the next day. He asked me before I left if I would come back in the morning, and I did so.

Q. How long did you stay there that time?

A. The greater part of the day—I was there then nearly every day for about two weeks. I think, every day.

Q. During any of these days that you were there, did you have any conversation with him about his food? Did he say anything to you about it?

A. Yes, sir. He told me the first day that I was there that he had not proper food; that he was suffering for proper food, and for some person to cook food properly for him, and he was starving; that is the word he used for proper food.

Q. During this first day that you were there, did you have any conversation with him about his monument?

A. No; not upon the first day.

Q. Upon any day?

A. Yes, sir; upon a subsequent day.



Q. What did he say about it?

A. It was in relation to this Mount Eagle University. He said that he did not intend to have any monument erected until a hundred years hence; then he would have a graduate, the one who had graduated with the highest honors at the Mount Eagle University, should plan his tomb that should then be erected to his memory. He also told me the inscription that should be on it.

Q. What did he tell you should be put on it?

A. Erected to the memory of Honorable Horace Hawes, who was the founder and benefactor of the Ladies' Home and Relief Society of San Francisco; also, of the Chamber of Industry, and of Mount Eagle University. And I believe he mentioned one or two other donations that he had made.

Q. What did he say about those who were with him, as you were?

A. He said that we should be looked upon with interest in the future—as I was probably going to live to be an old woman, and would live many years after he died, and I should be able to relate—tell that I had been about him in his last hours and administered to him, and that I would acquire interest and respect from that fact.

Q. What did he say about the furniture in his room, or his house?

A. He spoke of a secretary that he had in his room, an old-fashioned piece of furniture, very heavy, and said that it would be worth a great deal of money in the future, as having been used by him. Everything that he had used, and everything that was about him, would be valuable as associated with so great a man as himself.

Q. What did he say to you in relation to taking note of what he said?

A. At one time he said he wished me to get a blank book, and from that time he wished me to write down whatever he said. That it would be read by people with a great deal of interest, and be read by more people, and believed in by more people, than those who first read and believed the writings of Jesus Christ. I said, "Mr. Hawes, do you compare yourself with Him?" And he said, "I do;" and that "He was a very lowly man; He had very few followers;" and that "He was a good man." But he said there had been a great many others lived since who were smarter than He. "I myself am a smarter man."

Q. He said that there had been a great many men smarter than Jesus Christ, and he was smarter than Jesus Christ?

A. Yes, sir.

Q. What did he say would be done after his death with this book of his sayings which you were to write down?

A. It would be published; and afterwards, sometimes, once or twice, on other occasions, when he would make remarks and be a-talking, he would say, "Now, if you had your book, you might write that down."

Q. What did he say on the subject of his course of action with reference to everything being done; with reference to the present or the future; what did he say on that subject?

A. He said that he lived for future generations; that he had never performed an act in public, or had never uttered a word in public, without first considering how it would appear to his son when he was of age, and had arrived at maturity; and that ordinary men might live for the present, but he lived for the future. He seemed to occupy an eminence from which he could look forward hundreds of years; and



he saw that University and this Chamber of Industry in his mind's eye in successful operation.

Q. Did he talk with you at all about this boy whom he wanted to look back at his career and conduct?

A. Yes, sir; he talked a good deal about him.

Q. What sort of a boy he was?

A. He spoke of him as a noble boy—his noble boy.

Q. Did he ever change that tone at all about the boy?

A. He said that his future was ruined—his future prospects in life were ruined by the habits he had acquired under the tuition of his mother; that before he could speak plain she had taught him to lie; that was the object in removing him from her.

Q. What did he say the boy had become under his mother's tuition, if anything?

A. He said he had acquired habits that he did not know that he would ever overcome; that he was striving to do so, but he feared he would never overcome the habit of lying.

Q. State anything that he said about his wife with reference to herself and him.

A. He spoke of Mrs. Hawes—usually he treated her with aversion—seemed when she was about him to have an aversion for her, and everything she did was disagreeable to him. He had an expression on his face of aversion whenever she came near him. Still he said he had never had any person about him that could do so much for him—that she would do as much as any two persons; that I must take no directions from her at all, nor listen to what she would say, and never answer a direct question; if she asked a question, to avoid giving a direct answer; that she was as deep as the devil; that she would quiz and find out things and study me out when I would not think of it at all. She would be interfering to find out things that he would not wish her to know.

Q. What did he say of his wife, with reference to her refinement and adaptiveness for the lofty circles in which he moved?

A. He said she was not suited to them? her tastes were low and vulgar; she chose for her intimates, the low and vulgar; that he would like to see her at the head of the table where she would entertain the best of the country, but she was not suited to the place. At one time, in speaking of her, I spoke of her in that way, and I said I am surprised that you should marry such a woman. How did you come to marry her? He said that at the time of his marriage, he was very much occupied with other matters; he had very little time to spend in courting; that he did not really become acquainted with her until after they were married.

Q. Did he ever say anything to you, in relation to his having tried to get her to leave him and go away?

A. He said he had begged of her by all she held sacred, and all the language he could command, for the love of Christ, to leave him and let him die in peace. He said she hung about him, he thought, because she thought he was not going to live very long. She would not go away, he said. If she would go away, it was even better for her than if she remained with him. That he told her so, and besought her to leave him.

Q. Did he make any other complaint to you of her, with respect to her service to him, in the way of getting food?

A. He told me at first that it was sufficient for her to know that any one was agreeable to him, and she would prevent them from being about him, and if she knew of any particular kind of food he liked she would try to annoy him by preventing him from having it; still afterwards, he gave directions to the cook to prepare the food according to Mrs. Hawes' directions, and found a great deal of fault with her, because she did not.

Q. Did he ever say anything to you, in relation to the meagreness with which he was supplied with things? Did he make any complaint about them?

A. Yes, sir, he did. He was very poorly supplied, and needed a great many articles for his comfort. He said it was that woman's fault that he did not have them. At one time I said, "You ought to have a waiter to put food on." He took his food in bed with him, and he said, "I ought to have it, and ought to be served like a prince, but I cannot have even the smallest portion of my own estate."

Q. Who did he say prevented him having those things that he otherwise would have, if he were left to himself?

A. That woman.

Q. Who did you understand by that?

A. Mrs. Hawes; he sometimes mentioned her name.

Q. Did you give him anything—anything to use—any necessary article while you were there?

A. One afternoon before I went home he made out—I made out under his direction a list of groceries—things he required for his food; and he gave me money to purchase them.

Q. Was Mrs. Hawes there at the time?

A. No, sir; she had gone to Redwood. The next morning when I went down there—before I went out there—I went to the Nucleus grocery and purchased articles, and I carried out with me one or two small articles that I had bought there, and left the remainder to be sent out. After I had been there a short time, the cook was in the room—she came out into the kitchen, and said I was to go into the room—that Mr. Hawes wanted me. I went in and saw the package of groceries lying on the floor, and he wanted to know of me if I had been at the Nucleus grocery to purchase those things. I told him I had, and he said: "Don't you know I would rather give a thousand dollars than to have anything from that store come into the house." I said: "I did not know—I knew nothing of objection to that place when there, because the lady where I boarded traded there, and it was a convenient place for me to go." He said: "That man is a scoundrel and a rascal, and has connived with my wife to cheat me, and if he had his deserts he would be in the State Prison." He would not have a single thing from that store, and to take it back. I said: "They were paid for, and they were not sent to your name at all." I didn't like to have them sent back. He said that made no difference whatever; they should go back; and they were sent back. He said the man would send in a bill for them, anyhow; that they were sent there to his house, to his number, and that Bishop would send in a bill for them in less than a week. And they were accordingly sent back. At another time I went to purchase for him a tray, and he needed a bowl to eat from, and I purchased also a cup and saucer.

Q. Was not he supplied with those things?

A. He didn't have a bowl suitable to eat from and used to eat his crackers and tea out of a cup, and I got him a small bowl that he was

perfectly satisfied with, and that tray; but the cup he was dissatisfied with; I had paid too much for it; that he was not nice, and a cup that cost two bits was nice enough for him.

Q. What did you give for the cup you gave him?

A. Seventy-five cents. I said: "If you object to the price allow me to give it to you;" and he was very indignant at that, and said I was a poor woman and had no right to make a present to a millionaire, and ought to have known better. "If you had a million of money you would run through it in less than two weeks;" and then I went to make some reply, and he said: "No matter, not a word on the subject either from you or myself;" and that ended the subject.

Q. Did he ever express to you any fear of his wife, or anything of the sort?

A. He said he was afraid to be alone with her.

Q. Why?

A. He didn't state definitely why. The impression upon my mind was that, that he was suspicious of her giving him something he ought not to have. I do not think he said so in so many words, but he said he was afraid to be left alone with her.

Q. What amount of groceries was there from Bishop & Co's, that got him into this heat you speak about?

A. Two and six bits.

Q. What did it consist of?

A. There was farina; I think there was some corn meal. Oh! I think there was some sugar. I cannot remember the articles, but they were such articles as would be necessary for a sick person—that he needed.

Q. When he was talking in relation to those groceries of Bishop & Co., what was his manner and demeanor?

A. He was very much excited indeed; very angry, apparently, not at me so much, because I told him that it was entirely unintending—I had intended to do nothing different from what he wished me to do; but he appeared to be very much enraged; he said Bishop had connived with his wife to cheat him, and that he had now a bill which he should not pay; that he had supplied Mrs. Hawes without his order.

Q. How much of the time that you spent there did he talk with you upon these two subjects; his wife and his own greatness?

A. Well, almost every day there would be something on the subject. He became very much excited. I remained with him two nights while I was there.

Q. How did he pass those nights?

A. One of them very quiet and comfortable, and the other he seemed restless, and wanted to talk. Something brought up the subject of his wife, and he said this. I said, "Mr. Hawes, I have heard your wife spoken so highly of, and I have heard that she is very much in love with you, and that she wants to be about you and do everything she can for your comfort; why is it that you are so averse to her?" And he said: "Do you think she is in love with me? Allow me to be the best judge of that. Do you think if she was she would annoy me so?" And then he said, "No friend of hers should be about him; no one could be a friend of hers and his, and now he would go further and say that no one who would speak to her should cross his threshold."

Q. When he commenced talking about his wife, how long would he continue in the strain you have mentioned?

A. Oh ! I don't know; until something else probably would occur and attract his attention to some other subject.

Q. Would you give us any idea of the length of time he would run on about her in the way you have mentioned, before he diverged ?

A. No, I do not think I can. It was various, according to the circumstances of the case.

Q. How long did you ever know him to talk—the longest time you ever knew him to talk in that way ?

A. Oh ! I think the longest he ever talked was that night. I could not say, I have no means of knowing the time; it would be occasional remarks during the time, when of course I would be about him all the time; and when he was there speaking, there was other visitors.

Q. What was his wife's treatment of him, and her demeanor and conduct towards him ?

A. She seemed to be trying to please him every way she could; she seemed anxious for his welfare.

Q. Was there any change or variation in his mode of speaking of her—his treatment of her when she came, during the time when you were there, or was it always the same ?

A. There was—I only remember one occasion, when he directed the cook that she might sometimes give her something to eat. He says she was only to cook for herself and him, but he says, " if this woman comes around, I don't mind if you give her a bite." And he says, in a sort of tone of pleasantry, I could not remember the exact words, but I think he said, " I rather like her a little after all," or something to that effect.

Q. And when he liked her a little after all, he was willing the cook should give her a bite once in a while, in her own house ?

A. Yes, sir.

Q. Can you state how late your visits to him continued, to what time, down to what time ?

A. I went there just before Christmas, I think, and I was there about two weeks. I was there every day, and afterwards, I called occasionally.

Q. You were there the first week in January, you think ?

A. Yes, sir, the last of December, and the first week in January, I think. During that time he got a nurse, and I did not come so often.

Q. Did you visit him at all, after the first week in January, or down toward the time of his death ?

A. Yes, sir. I saw him occasionally until about the last of January, or perhaps, the first of February. I left town the third of March, and the last two or three weeks before I left town, I was very busy, and I did not see him at all.

Q. During the last interviews that extended up to the latter part of January, did he ever talk with you at all, when you went there ?

A. Yes, sir, he always talked to me when I went there.

Q. Down to the last time that you went to see him, did his temper and frame of mind, with respect to Mrs. Hawes, remain the same ?

A. Yes, sir, it seemed to. I did not see any change.

Q. Do you think that he was honest and sincere in his expressions of aversion towards her? Was it a genuine feeling on his part, do you think ?

A. I think so, from his manner, as much as what he said, because when she would do things for him, the expression of his countenance

showed that he hated to have her come near him. One time she was bathing his limbs, and she hurt him some way—and he had a tender spot in his limb near his ankle, and he said, “Why will you persist in wounding me; you never look at me that you don’t wound me.” He always expressed himself in that manner.

Q. When he was speaking about Mrs. Hawes, did you ever observe any difference in his manner or demeanor, or appearance, from that he presented when he was discussing other and ordinary topics?

A. Yes, sir.

Q. What was it?

A. As I said before. He always expressed an aversion in his manner, a dislike of her, and seemed to wish to—although he had a great love for truth, or professedly so, and sincerity and candor—he seemed to wish to deceive her.

Q. In what respect?

A. Not so much to deceive her, but to conceal from her anything that he thought would interest her.

Q. How often did he lay those injunctions of secrecy upon you, and tell you to tell her nothing?

A. Well, nearly every day that I was there, he cautioned me afresh not to allow her to get any satisfaction from me; whenever she asked me any questions to avoid them.

Q. Was there anything going on of any sort or description that was at all important to conceal from her under any view of the case?

A. Nothing at all.

Q. Nothing going on but the ordinary service and attendance upon a sick man, in the sick room?

A. Nothing.

Q. In speaking of her at any time to you in her absence, did he apply any epithets to her, did he call her any names?

A. Nothing more than to speak of her as that woman.

Q. Was that his habitual mode of speaking of her; the usual way of referring to her?

A. Yes, sir; more frequently than any other.

Q. In any of these conversations that you mention, either with respect to her or this transaction with Bishop & Co., did he use any profane or improper language?

A. Yes, sir; he swore about Bishop.

Q. What did he say about Bishop?

A. He said he was a damned scoundrel.

Q. Did he ever apply any such epithets as that, or oaths to Mrs. Hawes in speaking about her?

A. I never heard him.

Q. Were you there at night, or only during the day?

A. I was there during the day with the exception of two nights which I remained there.

Q. Those are the two nights you have spoken of?

A. Yes, sir.

Q. In one of those you say he slept tolerably well, and the other he wanted to talk pretty much all the night long?

A. I think he would have talked if I had not begged him to desist. I thought it was very bad for him to talk, and I told him he ought to try and get some sleep.

*Cross-Examination* by MR. PRATT—Q. Did he desist from talking when you told him to do so?

A. Yes, sir; he gradually became more calm.

Q. Did he usually comply to your requests?

A. Well, in what respect?

Q. Did you ever have any particular controversy with him—did you ever cross or oppose him?

A. No; I always avoided opposing him as much as possible, except on those occasions when I unintentionally excited him.

Q. Did you ever advise him about anything else—about talking so much, as it would be injurious?

A. I don't remember any particular advice I gave him.

Q. You don't recollect any other instance?

A. I may have done so, of course. A person about a sick man is very likely to say something that would be for their good.

Q. What you did say, did he usually comply with your request, and seem to be governed by your wishes?

A. I think he did in some instances.

Q. Did he ever become enraged at you?

A. He never—well, he spoke to me very rudely two or three different times; once upon the occasion of my buying a cup, and another time when there were some ladies called to see him.

Q. Was it rude language, or only rude in manner?

A. Rude in manner.

Q. On this occasion, when he became so much excited, when the groceries were brought home, his language seemed to be not on account of the expenditure, but on account of the goods having been purchased of Bishop & Co., did it?

A. Yes, sir.

Q. He said Bishop was a d—d scoundrel?

A. Yes, sir.

Q. And ought to be in the penitentiary?

A. He said he deserved to be in the State's Prison?

Q. You said he warned you repeatedly not to give Mrs. Hawes any information. Did he assign any reason why you should be cautious not to inform her what transpired?

A. Because he wished to keep her entirely in the dark. He did not want her to know what was going on when she was not present.

Q. What was going on that he did not want her to know about?

A. Nothing. Any conversation which he had, or any persons who came there, or anything that transpired, he did not wish her to know anything. There was nothing that he needed to keep secret.

Q. Didn't you know at that time that he was then engaged in preparing these deeds, etc., for the disposition of his property, his will, etc.?

A. I knew that he was preparing the deeds for Mont Eagle University.

Q. Did you know that gentlemen were there frequently in respect to that business?

A. I did.

Q. Didn't you understand from him that it was particularly with reference to that business that he wanted Mrs. Hawes kept ignorant?

A. No, sir.

Q. But you did understand from him that you were to keep from her a knowledge of anything that transpired, everything, and in the



meantime, they were arranging these conveyances, and this business was being transacted?

A. No, sir; I don't think the deeds were being arranged when I was there. He had proposed to do so.

Q. He had it in contemplation?

A. I think he had already done a great deal of it. I assisted in writing letters for him, and reading letters to him that related to the subject.

Q. Do you recollect from whom any of those letters came, by whom they were written?

A. He had a letter from Professor Evans, which I recollect.

Q. Do you recollect any other?

A. No; I don't think I read any other, but I believe I wrote a letter either to Mr. Evans, or to some professor in Europe, under his dictation—at his dictation.

Q. To some professor in Europe?

A. Yes, sir.

Q. In reference to the foundation of Mont Eagle University?

A. Yes, sir; it had reference to the course of study to be pursued.

Q. That was some other professor than Professor Evans, wasn't it?

A. I think it was written—the letter was sent to Professor Evans for this other gentleman.

Q. For another professor?

A. Yes, sir.

Q. Do you recollect what University he was professor of? Was it Oxford or Cambridge?

A. It was in Europe—a German University.

Q. Did he ever say to you that he had sent Professor Evans to Europe, partly for the purpose of acquiring information as to the best method of organizing this institution?

A. No, sir; I understood that he sent him there in order to keep and educate Horace.

Q. But Professor Evans did write him during this time, in regard to the foundation of this University?

A. Professor Evans had consulted another gentleman at Mr. Hawes' request, and had asked this other gentleman, this other professor to give him his ideas, and those were contained in the letter which I read to him.

Q. Then, at his dictation you wrote a letter to another professor in Europe?

A. No, sir; at his dictation I wrote a letter to Professor Evans for this other gentleman.

Q. The same one whom Professor Evans had already consulted?

A. Yes, sir; but it was not a full answer to the letter. It was principally an acknowledgment of having received the letter, and that he would answer him more fully at a future time.

Q. Did you write more than one letter on that subject while you were there, or with reference to it at all?

A. No, I don't think I did, with reference to that.

Q. Anything with reference to the Chamber of Industry?

A. No, sir.

Q. Were gentlemen calling there for the purpose of consulting with Mr. Hawes as to the disposition of his property, during the time you were there?



A. Gentlemen were calling there. There was a man by the name of Bartlett, that came there several times. I never heard the conversations. I don't know what they were consulting about.

Q. You never remained in the room during their interviews?

A. Never, when gentlemen called upon business.

Q. Don't you know that, as a matter of fact, it was a knowledge of the disposition of his property, or his contemplated disposition—what he was doing, with reference to that, which he particularly desired you to keep from Mrs. Hawes?

A. No, sir.

Q. You never had a suspicion of that while you were there, did you?

A. I never thought it was that, because what I knew of it was public property; everyone knew, knowing it had been published in the papers.

Q. It was not public property, exactly, what transpired in his room?

A. Of course, I had no knowledge of what transpired when I was not there.

Q. And it was those things he wanted you to keep from Mrs. Hawes?

A. He didn't wish me to converse with Mrs. Hawes upon any subject.

Q. Upon any subject at all? Did he say anything to you when he was giving you any of these admonitions, about Mrs. Hawes having spies to watch him, about what she would do, if she knew what was going on?

A. He said that she would find out by any means in her power. He was suspicious of her listening.

Q. Suspicious of her listening. Didn't he go beyond that and say that for years, or for a long time, she had kept up a system of espionage, listening at key-holes, and watching him, and setting men to watch him, to ascertain what he was doing, and as to his whereabouts?

A. I do not think he ever told me that she had set any one to watch him, but he told me that she had watched him herself, and that she was always suspicious, and anxious to know everything that was occurring.

Q. Now, wasn't he in as great a rage—didn't he manifest as much excitement in regard to Bishop & Co.'s grocery bill, as he ever did in relation to Mrs. Hawes when she was spoken of?

A. I think he was very much excited, indeed, about Bishop's bill, but it seemed to be because Bishop was conniving with his wife to deceive him.

Q. Did you ever see him speak, or hear him speak abusively or violently of any one else, except Mrs. Hawes and Bishop, when you were there?

A. Well, he spoke abusively of the Catholic priests; any one—not in the same manner exactly.

Q. You say he spoke abusively of the Catholic priests, but not in the same manner. What was the distinction? Explain to the jury what you mean by speaking abusively, but in a different manner?

A. He did not seem to be as violent. He said that they were a set of hypocrites, and that they had received bounty from him, and they would let him lie there, right in the shadow of the institution that

he himself had benefacted, or built, until he starved; they would let him lie there—he said at one time, I think it was Father Gallagher came there, that he was a liar; that he came there in the evening, and went away promising to send him assistance on the following day, and that he knew that he was sick, that he was suffering for food and attention, and the weather was such that it was impossible for him, sick as he was, to go out, and still he did not send any one to him, and he might lay four or five hours without ever having assistance or fire; and these priests and sisters were always running after him, and did not do anything for him for his assistance.

Q. Did you understand what he meant, when he spoke about their running after him?

A. He said they had run after him; they always came there for assistance whenever they wanted a subscription, or thought they could get money out of him; and finally he made a rule, that they should not be admitted unless they brought him beefsteak, or a cup of coffee, or a baked potato; and afterwards he sent out, when they came to the door, to know if they had brought him food, and if they had not to turn them away.

Q. After that, they stopped coming?

A. No, sir.

Q. They continued to come afterwards?

A. Yes, sir.

Q. Did they bring the things he required of them?

A. No, sir.

Q. Did he receive them when they came afterwards?

A. He saw a Father from Santa Clara; I don't know his name; I have forgotten his name; and at one time he saw two Sisters who came to see him. They were going to get him a cook, and this Father from Santa Clara gave him a crucifix, and afterwards came to see him.

Q. What proportion of the time that you were there, did Mrs. Hawes spend with her husband in his room?

A. She was there the first day I went there, and remained in town then two or three days, and afterwards she was in Redwood City a few days, and came back again. I understood that he sent for her afterwards.

Q. While she was there at the house, did she take care of him—wait on him?

A. Most of the time when she was there.

Q. Did he seem to appreciate her care and attention?

A. I didn't think he did, although he said she could do more for him than any one else; she would do more, and the food that she prepared seemed to suit him; but he did not acknowledge it to her.

Q. He frequently inquired for her, and called for her to come into the room, didn't he?

A. When he wanted her—needed her services.

Q. Her services seemed to be agreeable then, at times?

A. No; they never seemed to be agreeable to him.

Q. Still he persisted in calling her, and requiring her to wait on him?

A. Because there were some things that he said she could do for him better than anybody else.

Q. How was his appetite during the time you were there?

A. It was variable. At one time he would require her to have

meat, and at another time he would ask if I meant to kill him by bringing him meat—perhaps the next day.

Q. Did he take a large or small amount of food?

A. I think that he had a very good appetite, and would eat quite as much as a sick person should eat, and more, perhaps.

Q. Did Mrs. Hawes generally prepare his food for him when she was there?

A. Not when his cook was there.

Q. How much was the cook there?

A. She came there after I had been there a few days. I don't remember exactly the time she came, but a few days; she remained until after I ceased to go there. At first, Mrs. Coffin was there, and she used to prepare his food.

Q. He told you when you first went there that he was suffering for proper food, did he?

A. Yes, sir.

Q. Was that, from your observation, really the fact?

A. I saw him have food that was properly prepared, and I saw him have food that I did not think was properly prepared.

Q. When you first went there, I mean?

A. When I first went there, the day that I went there, there was soup and broth prepared for him to eat, and suitable for him to have.

Q. When he talked to you about his future fame, and about this monument, was he calm and tranquil?

A. Yes, sir; he seemed to be very much interested, indeed.

Q. Did he ever say anything to you about the length of time he expected to live?

A. He told me that he thought, if he could live to get into his house on the hill, that he might then live a long time. He was very anxious to live. He wished to live until his son attained his majority. He asked me very often if I thought he would, and if I thought he was going to live long, and what I thought of him.

Q. How many times while you were there, did he speak disrespectfully and excitedly about Mrs. Hawes?

A. A great number of times.

Q. Well, how many? Every day?

A. No, not every day; perhaps he would speak of her every day, but not in an excited manner.

Q. Sometimes then, he would speak of her without becoming excited?

A. He would mention her name without becoming excited sometimes, just merely mention her casually.

Q. Did he ever speak of her as his wife, using that term?

A. I don't remember that he ever did. He frequently called her Mrs. Hawes.

Q. He told you one time, that she was very deep, cunning?

A. No, smart.

MR. BARNES—Q. "As deep as the d——l?"

MR. PRATT—Q. What gave rise to that remark? What was the occasion? What seemed to be the occasion of his saying that she was as deep as the d——l?

A. His cautioning against allowing her to pick anything out of me. He said if she asked me the most simple question, even if I had my breakfast, not to answer direct, or give her any satisfaction.

Q. Did he tell you when he first began to dislike Mrs. Hawes, or whether he ever loved her or not?

A. No, I don't think he did. He never told me that he had ever loved her. He never told me of any time when he commenced to dislike her.

Q. He told you he never knew much of her until after he was married?

A. He said he was too busy to spend much time in courting.

Q. What seemed to be his great object and purpose in getting her away from him—simply that he might be at peace and rest?

A. Yes, sir; he said that he wanted her to go away and let him die in peace.

Q. What did you understand him to mean when he said it would be better for her if she would go away?

A. I understood that he would leave her more money—would provide for her better.

Q. Did you ever tell Mrs. Hawes that he had expressed these wishes—did you ever speak to her about it?

A. I cannot be certain, whether I ever did or not. Mrs. Hawes and I spoke together; we were friendly, and had a perfect understanding with each other, that is as friends; and I looked upon Mr. Hawes as a sick man; sick in body and sick in mind; and I thought that she was well, and of course I had no concealment from her whatever, any more than I did not wish to excite him; I did not wish him to hear me. He would become suspicious if he heard any conversation in the adjoining room; he would think we were saying something that he did not wish us to say, and of course I avoided exciting him in that way.

Q. Did you, at any time, tell Mrs. Hawes that he had said it would be better for her if she would go away, and let him die in peace?

A. I have told her so, but I think it was since.

Q. Are you sure you did not tell her that during your stay there?

A. No, I am not positive. I may have told her so then. I cannot say positively.

Q. Did you tell Mrs. Hawes, that Mr. Hawes had received a letter from Professor Evans, in regard to Mont Eagle University?

A. I did not. Mrs. Hawes knew of the letter. It contained intelligence of Horace, and I think that she read a portion of the letter once, or it was read to her.

Q. Who read it to her?

A. I don't remember whether it was read to her, or whether she read it. I know she knew of it.

Q. Did you give her the letter?

A. I think not.

Q. Who did give it to her?

A. I cannot say. I think Mr. Hawes himself allowed her to read the letter, or told her of the contents of it. She knew of the receipt of the letter.

Q. Did you inform Mrs. Hawes that you had written a letter to Professor Evans at the dictation of Mr. Hawes?

A. No, sir.

Q. You never informed her of that fact?

A. I don't think I ever did.

Q. Did you ever tell Mrs. Hawes anything that transpired between you and Mr. Hawes, or between Mr. Hawes and other parties, while you were there?

A. Yes, sir; I told her one thing that transpired between Mr. Hawes and myself.

Q. What was that?

A. He told me that she had heard that I had said that he paid me five dollars a day; that I never left the house without getting my money; and I said: "How could it be possible that she could hear such a thing? It is not true; there must be some mistake in regard to the matter;" and he said, he thought it was a contrivance of her's to find out if he did pay me anything.

Q. Did you tell her what he said about Bishop & Co.'s bill for groceries?

A. I think I did. I think she was there. I am not positive whether I was at the house again.

Q. Did you tell her what he said about Father Gallagher, the Catholics and the Sisters of Charity?

A. No, sir.

Q. Did you tell her anything else?

A. I may have told her something else; nothing of importance.

Q. As a matter of fact, didn't you tell her pretty much everything that transpired in Mr. Hawes' room?

A. Oh, no.

MR. PRATT—He told you on one occasion, that he was afraid, did he, to be alone with Mrs. Hawes?

A. He did.

Q. What reason did he assign for that?

A. He did not give me any reason.

Q. He gave you no reason whatever?

A. He did not.

Q. You said that on one occasion, he told the cook that he rather liked that woman, and wished she would give her a bite to eat occasionally. How did he happen to make that observation? What seemed to be the occasion of it?

A. He told the cook that she had to cook for herself and him, and he said, "If this woman comes around, I don't mind if you give her a bite occasionally," and said, "I rather like her a little, after all."

Q. Was that all that was said about it, or in that connection?

A. That was all, except in his directions to the cook, what she was to do for him—what would comprise her duties.

Q. How much of the time that you spent there, was Mrs. Hawes away at Redwood City?

A. She was at Redwood the most of the time.

Q. Did you have any correspondence with her while she was there?

A. I had not.

Q. Did you receive any letters from her?

A. I did not.

Q. After your two weeks had expired, and you had left there, how often did you return and see Mr. Hawes? About how many times?

A. I could not say how many times; I went every day to see him.

Q. Every few days. How long did you usually stay on the occasion of those visits?

A. Sometimes fifteen minutes; sometimes half an hour.

Q. Did you spend the most of that time in Mr. Hawes' room?

A. Yes, sir.

Q. You spent it in conversation with him?

A. Yes, sir.

Q. Did anything unusual or remarkable occur, in any of those conversations?

A. No, sir; I don't recollect of anything unusual, excepting on one occasion, as I said.

Q. Are you a married woman?

A. I am.

Q. What business is your husband engaged in?

A. Mining.

Q. Where?

A. He has a mine in Shasta.

Q. Where is he now?

A. He is in the city.

WINSLOW HALL, called for Contestant. Sworn.

*Examined* by MR. BARNES—Q. What is your business?

A. Contractor, sir; builder.

Q. How long have you lived here in San Francisco?

A. A little over twenty-two years.

Q. Did you know the late Horace Hawes in his lifetime?

A. I did, sir.

Q. During his last sickness, did you see him?

A. Yes, sir; frequently.

Q. Down to what period before his decease?

A. Down to about twelve days.

Q. Were you with him to help to take care of him any of the time, sitting up with him?

A. Yes, sir; I sat up with him about eight or nine nights; stopped there with him.

Q. During what month?

A. Along in January mostly, and February—the first part of February; and December, too.

Q. How did he pass his nights—restless and talkative?

A. Well, sir, some nights he was, and others he rested very nicely.

Q. Nights when he was talkative, what were the principal topics of his conversation with you?

A. Well, he talked about his great scheme of the universities that he was going to found, and sometimes he would talk about his trip to Europe. He talked of his trip in Europe, and said there was not a stove in France that was fit to use, nor a house fit to live in.

Q. Did he talk about anything else, or anybody else connected with him?

A. Well, yes; he spoke of lawyers and doctors, and to beware of them as I would of the devil. He said, "I wish I could write it in stone." He said one night: "Beware of lawyers and doctors! I wish I had the power now to write it in stone, so that the whole world should know it."

Q. In stone?

A. Yes, sir; on stone.

Q. What, his opinion of doctors, I think you said?

A. Lawyers and doctors.

Q. Anybody else he talked about?

A. Oh, yes, sir.

Q. Who?

A. Well, he talked about various subjects; about nurses a great deal; how unfaithful they are. He talked about nurses; that they were



of no use, and wished me to get him a first-class cook, and begged of me to do it, as the greatest boon I could do.

Q. What did he say with reference to his condition, with respect to food?

A. Well, he complained of it a great deal at times.

Q. What did he say?

A. Well, that he was starving; that he could not get anything cooked right; could not get a first-class cook; it was impossible.

Q. Did he talk about his wife?

A. Not much.

Q. Did he talk about her at all?

A. Yes, sir; he did. On one occasion when she came up, he ordered her out of the room.

Q. Now wait a moment. Now I will take it now first with reference to the nights you were there. During those nights, did he talk at all about her, or make any remarks to you about her, anything about her being jealous of him?

A. Yes, sir; at one time. That was the time when she came up from Redwood.

Q. Give us an account of that time?

A. Well, I was sitting there. It was just before dark, and she came up from Redwood City, and the first thing I knew, the boy that was in the office brought in a valise, and put it down, and Mr. Hawes was so furious; he looked at it, and he tells the boy to "take it out; that can't remain here at all," and Mrs. Hawes came in in about two minutes, perhaps, and he looked up, and he says: "What, are you here?" She says: "I have a right here. I am your wife;" and she went up to the bed and kissed him, and he says: "You can't stay here at all; there is no room for you;" and he immediately rang the bell for the servant girl to come, and he said to the servant girl: "You will occupy that room," speaking of the next room to us, "and nobody else can occupy it." She said: "Very well," and went out.

Q. Did Mrs. Hawes remain?

A. Mrs. Hawes remained; perhaps she remained there an hour, or an hour and a half. She went out, and took some dinner in the next room with the nurse girl, and after that she went away.

Q. What did he say? You said he made some remark that night about her being jealous of him—what was that?

A. Well, that was after she went away.

Q. Then she went away, and then did you have a talk with him after she had gone?

A. Yes, sir.

Q. State what occurred, and was said by you and him, as near as you can?

A. He said that she was jealous of him as h—l. She was a continual annoyance all the time, a continual annoyance. He says: "She can't let me die in peace. I want to keep away from her; I don't want her here. I am getting along first rate until she comes."

Q. Anything more about her, or about the effect of her coming there upon him?

A. No, sir; I don't remember.

Q. Or about killing him?

A. No, sir.

Q. Did he talk about his house down in the country?

A. Yes, sir.



Q. What did he say about that ?

A. He said he hoped to be able to live in it for two or three years; if he could only live through March, he thought he would be able to live two or three years.

Q. Did he say anything about this little daughter, Carrie, who has been spoken of ?

A. Yes, sir. Every night he always talked about her.

Q. What did he say about Carrie and her mother ?

A. He said she is the most superior child he ever saw in his life; there was never a child anything like her; splendid memory.

Q. Did he say anything about her in comparison with her mother ?

A. Yes, sir.

Q. What ?

A. She knew more than forty like her.

Q. Did he talk about Horace ?

A. Not very often. He might have mentioned him once or twice.

Q. What appeared to be the difficulty in his mind with respect to his wife ?

A. I don't know.

MR. PRATT—[Interrupting]—I object to the question.

MR. BARNES—Then I will change it. What character of complaint did he make of his wife to you ?

A. Well, he did not specify anything particularly to me.

Q. What did he say about her treatment of him, if anything ?

A. He never told me about the treatment in regard to that.

Q. What did he say, if anything, about what she said to him, and how she affected him ?

A. No, sir.

Q. Did he tell you any reason why he did not want her there ?

A. No, sir; only perhaps that she was jealous; that he said she was jealous of him, and I inferred from that, that he was afraid she would watch him.

Q. Did he say anything about her tormenting him ?

A. No, sir. Well, he said it was one continual annoyance, she was to him.

Q. Is that all he said ?

A. That is all.

Q. Did he ever say anything to you about her killing him by inches, and tormenting his life out of him ?

A. I think he said that.

Q. What was it he said about that ?

A. I cannot remember all he said.

Q. Can you remember anything on that subject ?

A. I don't know as I can specify any particular time.

Q. Did he ever say anything like that, that I asked you about ?

A. I think he did.

Q. Won't you go on and give it as near as you can, in his language ?

A. I don't know as I could. He told me one time, that he did not allow any person to dictate to him.

Q. My question is correct. You say that he did say something about his wife killing him by inches. I want you to try to recollect what that was, and how he expressed himself ?

A. Well, I don't remember. I don't know as I can remember the exact words that he used.

Q. As near as you can?

A. Well, that she was one continual annoyance, just killing of him by inches by her presence, and he did not want her there. He wanted her to stay down at Redwood farm.

Q. During the time that you were there, did anything occur, with reference to a breaking into the house, when you were sitting up with him?

A. Well, yes, sir. There was one night he waked me up, and said, "Get up, quick! There is a robber getting into that window."

Q. There was a robber coming into the window?

A. He waked me up. It was three or four o'clock in the morning.

Q. Where were you, in the same room with him?

A. Yes, sir; in the same room with him, asleep on a sofa.

Q. What did you do? What took place?

A. Well, I immediately got up, and went right to the window, and commenced raising the curtains to look out, and he spoke to me. He says, "Never do that. Many a man has got a bullet through him that way." He says, "put it down immediately." He says, "In that drawer there is a pistol. That will give them about seven shots." He says, "Just sit down and keep quiet." Says he, "I have got one pistol under my head, and you get that one."

Q. He had one pistol under his head, and you to get the other one?

A. Yes, sir; out of the drawer.

Q. What did you do?

A. I sat down in the chair; I did not take the pistol.

Q. Did you take the pistol?

A. No, sir.

Q. What did you do?

A. I sat down and waited. I says, "I think it is a mistake. I think that is a wagon that went past, a milk-wagon, or something of that kind."

Q. What did he say?

A. He said he thought there was somebody there.

Q. Did you go to the window at all?

A. I did go to the window first.

Q. Was there anybody there?

A. No, sir.

Q. Do you know what time it was?

A. I think it was between three and four o'clock; I know I looked to see what time it was.

Q. Well, what time, do you recollect?

A. I think it is between three and four o'clock. That is what made me think it was one of those milkmen. I did not see him; I heard the noise just dying away, as I got up.

Q. Did he get his pistol out?

A. No, sir; I did not see it.

Q. Do you know whether he had one or not?

A. Yes, sir.

Q. Did he have one?

A. Yes, sir; I have seen it.

Q. I mean at that time, did he have a pistol under his pillow?

A. I think he had; I saw it a few days before.

Q. Where did he keep it?

A. He kept it under his pillow.

Q. What kind of a one was it?

A. I think it was a Colt's revolver, a small one.

Q. At this time, what was the state of his bodily health?

A. Well, at that time he was very feeble.

Q. Was he able to get up, or get about at all?

A. Well, at that time he rode out occasionally.

Q. What time was this, that this supposed attack was made on the window?

A. I think it was about the first of January.

Q. How long after you went there to stay with him nights?

A. I went there—down to the last time I was there, Mr. Bates sent for me. I think it was about the last of February, the very last; I think that was the last night I stayed there.

Q. When he was speaking to you in this way, about Mrs. Hawes, did he appear to be sincere and honest in his convictions about her?

A. Yes, sir; I think so.

*Cross-Examination by MR. PRATT*—Q. When did you first become well acquainted with Mr. Hawes?

A. Well, I became well acquainted with him in 1862 or '3. I built a house for him.

Q. Have you had more or less relations and intercourse with him ever since?

A. Yes, sir; more or less; and done some building for him since.

Q. How many nights did you say you watched with him, and sat up with him?

A. I don't know whether it was eight or nine. It was eight or nine nights; but then I was there frequently at other times, day times.

Q. Was he very talkative—did he converse with you a great deal?

A. Yes, sir; he conversed a great deal.

Q. Day and night—that is, nights when he was not asleep?

A. Yes, sir.

Q. You say he told you about his trip to Europe?

A. Yes, sir.

Q. Did he tell you at length what he saw, and about his experiences?

A. No, sir; he told me more about the detail of buildings, how they were built, and how uncomfortable it was in regard to stoves and cooking. He said they did not know anything about cooking. There was not a first-class cook in France, not one.

Q. He talked to you also about the Mont Eagle University, did he?

A. Yes, sir; he spoke of it.

Q. Did he speak at length of it?

A. Well, he told me that it was a fine thing; that he would be buried there, and in a certain spot, and that there would be drive-ways on it, planted with splendid trees; there would be thirty miles of drive-ways, he said.

Q. Did he go over the whole scheme in detail, and tell you what the advantages and benefits would be, and how it was to be organized, etc.

A. No, not in detail, sir.

Q. How much did he talk to you about lawyers and doctors—how much time did that occupy?

A. It was only that one evening; he talked considerably of it then. He said he knew, because he had been a lawyer, and he knew what they were.

MR. BARNES—Q. Did he tell you he was one himself?

A. Yes, sir.

MR. PRATT—Q. You continued to be there a good deal in the daytime, down to what time?

A. Well, I was not there in the daytime much after January.

Q. Not much after the first of January?

A. Well, yes, sir; down to the middle of January I was there.

Q. Did you always see Mr. Hawes when you went there?

A. Yes, sir; always.

Q. Always having conversations with him?

A. Yes, sir; more or less; yes, sir; always.

Q. How long would your visits generally be?

A. In the daytime?

Q. Yes, or at any time after you ceased to watch with him?

A. Well, it was long before that, because I had a little business with him.

Q. Did you have any business at this time?

A. Which time?

Q. In January or February?

A. No.

Q. You had no business with him then?

A. No, not then; not as late as that.

Q. Did he state any reason to you why he ordered the servant to occupy the next room that night?

A. To prevent Mrs. Hawes from sleeping there.

Q. You spoke of his having heard that Mrs. Hawes watched him, and was jealous of him, and annoyed him, and tormented him to death, and was killing him by inches. Did he go into any explanation or detail of those matters, or state to you why she watched him, or what her object or purpose was?

A. No, sir; he never went into detail on it at all; no, sir, never.

Q. Did he talk with you frequently about his business situation and circumstances?

A. Well, no, sir; he talked of his death, and his doctors. He did not think they understood his case. He said he had tried all the best doctors in this country and Europe, and they did not understand his case.

Q. Did he seem to be anxious—did he seem to think that he could not live very long?

A. Yes, sir; at times he did.

Q. On this occasion, when he asked you to go to the window, that a robber was coming in, were you asleep when he called on you?

A. Yes, sir; I was fast asleep.

Q. You don't know whether there was any noise to disturb him?

A. Well, I know I heard the sound of a carriage.

Q. The last time you were there, was it about the last days of February?

A. Yes, sir; about that time.

Q. Did you see Mr. Hawes on that occasion?

A. Yes, sir; I staid all night.

Q. Where did you find him?

A. I found him in bed.

- Q. Very feeble?  
A. Very feeble.  
Q. Did you have any conversation with him?  
A. Yes, sir.  
Q. What was the subject of that conversation?  
A. Well, I don't remember particularly.  
Q. Well, was there any special conversation, any more than the ordinary general talk, commonplace talk?  
A. I think not, at that time.  
Q. Did he speak to you at all, when you were there on the last day of February, about having disposed of his property, or with reference to the Mont Eagle University?  
A. No, sir.  
Q. He did not allude to it?  
A. He never alluded to it at all.  
Q. What was his condition then, that is, his apparent condition, his nervous condition—was he calm, quiet and tranquil?  
A. Rather more than he had been. Very feeble.  
Q. Was there anything remarkable or unusual in any of these conversations between him and you?  
A. Well, I don't know—he was very excitable.  
Q. Anything beyond that display of excitement and passion and temper sometimes?  
A. Well, no. I don't know that there was.  
[Here the Court adjourned till to-morrow, at ten o'clock.]
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## EIGHTH DAY.

WEDNESDAY, November 22, 1871.

LEWIS J. LEE, called for Contestant. Sworn.

*Examined* by MR. BARNES—Q. How long have you lived in San Francisco?

- A. About ten years.  
Q. What has been your occupation?  
A. For eight years, Deputy Clerk, and two years, Deputy Recorder.  
Q. In this city and county?  
A. In this city and county.  
Q. Your present occupation?  
A. Clerk in the County Clerk's office.  
Q. Did you know the late Mr. Hawes in his lifetime?  
A. I did, sir.  
Q. Do you remember his last illness?  
A. I do.  
Q. During that illness, did you have any business with him, if so, what?  
A. I did, sir.  
Q. What was it? When was it, rather?  
A. It was the latter part of February; I think it was the last of February.  
Q. What time did you say?

A. I think it was the last day of February; the first time I went there.

Q. The first time you went there, was the last of February?

A. Yes, sir.

Q. How long did you stay then?

A. Three days.

Q. How did you come to go there, at all?

A. Mr. Bartlett, Washington Bartlett, sent for me to do some writing for Mr. Hawes. I did not know the nature of it, until I got up to the house.

Q. When you went there, where did you find him?

A. He was in his room at the time. I went into the front office, and waited about an hour. He was getting up and dressing himself.

Q. Was that the main part of the house, or the wing?

A. In the wing.

Q. First, there is the office, and a little room back of that, and a little room back of that?

A. Yes, sir.

Q. Which room was he in?

A. The sitting room.

Q. A little room opening out of the office?

A. Yes, sir.

Q. And not in the main part of the dwelling?

A. No, sir.

Q. What did he say to you?

A. After I went there to his room, he asked me what sort of a hand I wrote, and gave me a piece of paper, and I scribbled off something, and showed it to him, and he said that would do, and he took from his pocket then, which looked to me like two or three former wills, by the heading of them, glancing at them.

Q. Like what?

A. Looked like two or three former wills.

Q. Wills that had been drawn previously?

A. He took one of them that way. I don't know which of them it was, and told me to copy, I think, one or two clauses, the heading of the will, which I did. Then he commenced and dictated to me the other clauses. He asked me to write first in lead pencil, and I did so, and then to read it over to him, the clause that he had dictated, and then to go out in the office, and write it in ink. I would do so, and come back, and he would ask me to read the clauses to him, and I would do so, and he would say, "they were not right. He did not tell me to do any such a damned thing"—to use his words.

Q. When you would take it down in pencil, I understand, you would read it over to him, and go into the other room and copy it off, and bring it back and read it to him, and then he would say what you said, would he? Then what would he do? Dictate it again?

A. He would sort of doze off then, and I would wait for him perhaps half an hour, and then he would come to, and ask me, uttering an oath, why I didn't go on.

Q. State what he said?

A. He asked me why in hell I didn't go on. I told him that the last clause he had dictated, and he said it was wrong. He said he did not tell me any such thing.

Q. How many times did you write that will over, clause by clause, during your employment there?

A. About ten times.

Q. With any changes?

A. Yes, sir.

Q. What sort of changes?

A. Placing the clauses in different positions.

Q. Except that, the placing of the clauses in different positions, was there any material change in the instrument?

A. No, sir; I don't think there was. He seemed to forget what he had dictated to me.

Q. Let me ask you, what was his manner and demeanor toward you while you were doing this work?

A. He was very impatient, very irritable.

Q. How, with reference to profanity?

A. Well, he used a great deal of profanity; a great deal.

Q. How many times, during the course of those three days, do you think it was that you wrote a clause of the will in pencil, and read it over to him, and he read it himself, and then transcribed it off in ink, and he denied he had ever dictated it?

A. A half dozen times; from eight to ten times a day.

Q. How many days were you occupied with him at work upon this will?

A. Nearly three days.

Q. How much time each day did you spend there?

A. From about half past nine o'clock in the morning until six o'clock in the evening.

Q. With no intermission?

A. Only that he would say that he was weak, and would stop for perhaps a word or two.

Q. And from nine o'clock in the morning until six you were there writing, or waiting for him?

A. Waiting for him; yes, sir.

Q. During the time that you were there with him, did he have any legal assistance or advice in the preparation of this thing?

A. Not that I know of.

Q. Did he say anything to you, with reference to concealing what you were doing, and what he was at?

A. No, sir.

Q. What instruction did he give you with reference to the work you were doing?

A. Nothing.

Q. He said nothing about it?

A. No, sir.

Q. When he asked you at the times when you would stop and wait as long as you say you did, and he aroused and asked you why in hell you did not go on, and you replied that you were waiting for him, and he said the last you wrote was wrong, what did he say to you?

A. He would say—he asked me, by God, if I came out to dictate to him. I told him no, I did not.

Q. Then what would he say?

A. He then stopped, seemed to close his eyes, and remained silent, and I would wait for him.

Q. How many times during the course of the three days you were there did this scene repeat itself, that you now mention—how often did it occur?



A. Well, I can't exactly state the number of times, but it was very frequently each day. Often after I had written it in ink and taken it in to him, and read it over to him, he would say it was all wrong; he didn't tell me to write anything of the kind. He told me to go back and copy it over again. I would go back and copy the same words exactly, read them to him, and he would say, "That is right," and then he would dictate to me another clause.

Q. Won't you look at this paper [The will shown], and tell me in whose hand-writing the body of it is, if you know?

A. It is my hand-writing.

Q. Do you remember the day when you got this thing finished—completed?

A. Yes, sir.

Q. How many days was it after you went there were you writing out these three sheets and a half?

A. I think it was the night of the first that I furnished it—the first of March.

Q. That was two days, then?

A. That was two days.

Q. That you were there on these three pages?

A. Yes, sir.

Q. When you had finished this document ready for signature, what did you do with it?

A. I took it in to him. He was lying in bed, and read it over to him twice, and he said it was all right. This was about seven o'clock in the evening. He told me then to put it in my pocket. He said he could not trust it in the house, because there were thieves in the house. I took it and put it in my pocket and carried it that night. He told me the next morning to come out there with a witness.

Q. That night, before you went away, he told you to come the next morning?

A. To come the next morning with a witness. I had a great deal of trouble getting any one, but succeeded at last and went out there, and got out there about ten o'clock. He seemed to speak as if I had delayed the matter. I told him I had hurried up as fast as I could.

Q. Why did you not go out there earlier?

A. I could not get a witness.

Q. Why not?

A. Well, I asked several parties, and they said they did not like Horace Hawes much, and they would not take the trouble to go out there.

Q. You did try diligently to get one? When you got out there, what did he tell you?

A. I told him who I had got, and he seemed to know the witness.

Q. Whom did you bring?

A. P. O. Barry; and he asked to see Mr. Barry, and Mr. Barry came in. He told Mr. Barry after he had held some conversation with him, to go out into the outer office. He then told me to read the will to him. I read it to him.

Q. How many times before that had you read it to him since it was completed?

A. Twice the night previous.

Q. Twice the night previous, it had been read?

A. And he said it was all right. And I read it to him the same as I had read it before, and he said it was all wrong. I asked him what

I should do, and he said: "Put it in my pocket, it is all wrong; all got to be done over again." I put it in his coat pocket, which was hanging up, and then went out in the outer office and remained there two or three hours, I think. He sent for me, and I came in and he said he had nothing more for me to do. He was counting out some silver, I believe, and he gave me seven dollars and fifty cents, and told me to go out and write a receipt for it.

Q. What was that for? Three days' work?

A. Yes, sir; and I went out in the office and wrote a receipt, and then went in and bid him good-day and went away.

Q. Now this will, this paper purports to have been attested by Stillman N. Putnam, of San Francisco, and Alfred Clark, of San Francisco. I want you to look at this thing, and see whether there has been from the time he told you after you took the witness out there on the morning of the day it was executed, and he heard it read over and told you that the thing was all wrong and had got to be done over again, and sent your witness away and dismissed you, whether there is any change of any kind or description in it from the condition in which you gave it to him that morning, without a word or a line altered, as witnessed by Putnam and Clark?

A. [After examining the paper.] The only change is the date. It is dated the second of March.

Q. You wrote it with the date blank?

A. With the date blank; yes, sir.

Q. And the "second of March,"—that is in Mr. Hawes' handwriting?

A. The day.

Q. You did not leave any date in it?

A. No, sir; I left it blank.

Q. That day, or the night before, I understood you to say, he told you to put it in your pocket and take it away, for the reason that there were thieves in the house?

A. Yes, sir; he said it was not safe there; it would be stolen from him.

Q. The next day, when he took it away from you, where did you say he told you to put it—or put it himself?

A. In his pocket—his coat pocket.

Q. Where was his coat?

A. It was laying near the bed, or hanging up, I believe.

Q. Hanging up on the wall?

A. I think on a nail; it might be on the bed-post.

Q. What kind of a coat?

A. A black coat.

Q. An overcoat or a body coat?

A. I think it was a body coat.

Q. Do you know whether that was his usual place for depositing valuable papers?

A. Well, all the papers I saw generally came from that pocket.

Q. Was there any secretary or place where such papers could be put, in the room?

A. Yes, sir.

Q. Whereabouts?

A. In the corner of the room; the same room he occupied.

Q. What other papers besides this did you ever see him put in or take out of that coat pocket?

A. Only his former wills that I mentioned.

Q. Did he dictate this will to you from those—use those as aids to the dictation?

A. Only the first two or three clauses.

Q. You said that when you had written a sentence, paragraph, or line, as the case may be, he seemed to doze off. What do you mean by that? What would he do?

A. He seemed to be rather weak, and seemed to close his eyes. I would think, perhaps, he would be asleep, and would not trouble him, and suddenly he would start and come to himself, and say why in hell I did not go on..

Q. When he told you that there were thieves in the house, and he could not allow the paper to remain in there, but you must keep it in your pocket over night, did you say anything to him, or make any remark to him upon that observation?

A. No, sir; I think I did, now.

Q. What did you say to him?

A. I told him I did not like the responsibility of carrying the will—to take the responsibility. He said he would like to have me; if it remained in the house it would be stolen from him. I told him I did not like to take the responsibility of taking the will, and he said well, he would rather trust it with me than trust it in the house, because it would be stolen from him.

Q. Did he say who would steal it, or make any intimation about it?

A. No, he did not. He said there were thieves in the house.

Q. Do you know who was in the house at that time?

A. I do.

Q. Who was there?

A. There was the nurse and Mrs. Hawes.

Q. During the time you were there, did you see Mrs. Hawes in his presence at all?

A. I did; yes, sir.

Q. What was his manner and demeanor towards her at this time you were there writing his will, and she was there?

A. She used to come in and wait upon him once in a while. He did not seem to pay any attention to her.

Q. Did he speak to her?

A. No.

Q. Did he look at her?

A. No.

Q. What was her demeanor and conduct towards him?

A. She seemed to be trying to do all she could for him.

Q. How as to kindness, and all that?

A. She seemed to be very affectionate towards him.

Q. Could you form any opinion, or did you form any opinion, as to the state of his mind toward her, while you were there, from anything you saw?

A. The state of his mind towards her? No; I don't know as I did.

Q. You say he never spoke to her?

A. No; he never spoke to her.

Q. Never looked at her?

A. No, sir.

Q. Did you see any signs or demonstrations of affection on his part for her, or the nurse?

A. Never.

Q. How would you characterize it, if he never spoke to her; if he never looked at her; though she was there, busy taking care of him—how should you characterize his conduct toward her?

A. I should say it was very strange.

Q. I know it would be very strange; but was it other than that, I mean? Not that his conduct was strange, but whether it exhibited regard or the reverse, or what?

A. Well, it showed me that he had not much regard for her.

Q. Who brought him his food while you were there?

A. The nurse, Mrs. Hill.

Q. What sort of service or aid did Mrs. Hawes render to him—in what way?

A. Well, when he was dressing she used to come in and \* \* \* with the assistance of Mrs. Hill, and help to dress him. That is the only assistance I saw. Mrs. Hill always brought him his food.

Q. How was his appetite?

A. Very good; it seemed to be.

Q. Do you know how many times a day he ate there?

A. Well, in my presence, I only saw him eat two or three times a day.

Q. That is between noon and six?

A. Yes, sir; generally soup or chicken that he used to eat.

Q. Did you hear him speak of his will, or what he was doing, in Mrs. Hawes' presence, or say anything to her in her presence about his will?

A. No, sir; I never did.

Q. If she were in the room what would he do, if anything?

A. He would remain silent.

Q. Would he continue so, during all the time she stayed in the room?

A. Yes, sir; he was more particular with her than he was with the nurse.

Q. Did you observe that as the feature of his conduct, that when she was in the room, he would not speak until she went out?

A. Yes, sir.

Q. From what you saw and observed of his language and conduct, during the three days that you were there, did you form any opinion at that time with regard to his mental condition?

A. I did; yes, sir.

Q. What was that opinion?

A. I think he was a man of unsound mind.

*Cross-Examination of LEWIS J. LEE:*

MR. SAWYER—Q. At the time Mr. Hawes was dictating his clauses of the will to you, was there anything peculiar in his manner of dictation?

A. The only thing peculiar in his manner was his hesitation.

Q. Did he have any particular tone of voice—was it low or light?

A. Well, it was neither low nor very light—a common tone of voice.

Q. Did he tell you to read it over to him in any particular tone of voice?

A. No, sir.

Q. Was he afraid of any person hearing it?

A. No.

Q. Was that the first of your personal acquaintance with Mr. Hawes?

A. No, sir.

Q. How long had you known him?

A. I had known him about six or eight years—eight years, I guess.

Q. Had you ever had any business transactions with him before?

A. Never.

Q. Had you ever had any conversation with him on any subject prior to that time?

A. Oh, yes, sir.

Q. How often?

A. Well, it might be three or four times in regard to the registration law, which I was connected with much of the time.

Q. Was that the only subject?

A. That was all; yes, sir.

Q. What time in the day was it that you first went there?

A. I think it was about half past nine in the morning, I should judge.

Q. You found him in the sitting-room?

A. I found him in the sitting-room.

Q. Dressed, and sitting up?

A. No; Mrs. Hawes informed me that he was getting up, and would see me as soon as he dressed himself. I waited outside, in the outer office.

Q. When you first arrived then he was in the sitting-room?

A. He was in the sitting-room, getting up.

Q. Did he sleep in the sitting-room?

A. Yes, sir; he had only one room—a bed in the sitting-room. That was his bed-room.

Q. It was his bedroom and sitting-room where you found him—one room kept for both purposes?

A. Yes, sir,

Q. How long did you have to wait before you went into his room?

A. I waited about three quarters of an hour, I think.

Q. What was his situation when you went into the room.

A. He was sitting up in the rocking-chair, I believe.

Q. He seemed to be very feeble, didn't he?

A. Yes, sir.

Q. You say he took the papers from his coat pocket?

A. Yes, sir.

Q. The coat that he had on?

A. Yes, sir.

Q. How many were there of those different documents?

A. Well, I could not say exactly. There must have been three or four.

Q. Did you examine them or read them there?

A. No, sir; only the one that he handed me.

Q. Did you read the whole of it?

A. No, sir.

Q. How much of it?

A. I only read the clauses that he told me to.

Q. What were those? The first clauses?

A. The first clauses. I don't know whether there were two or three. I have forgotten now.

Q. You only read the first two or three clauses of one of those papers?

A. Yes, sir; that was all.

Q. Did he hand you other papers at all?

A. No, sir.

Q. Did you look at the end of the paper which he gave you to see whether it was signed or not?

A. No, sir.

Q. The whole thing then is simply that he took three or four documents from his pocket, handed you one of them and asked you to copy the first two or three clauses?

A. Yes, sir.

Q. Which you did?

A. Yes, sir.

Q. Without any further examination of those papers?

A. Yes, sir.

Q. What was the first question? Or what was the first thing that Mr. Hawes said to you when you went into the room?

A. He asked me what kind of a hand I wrote.

Q. Did you give him a sample?

A. I gave him a sample; yes, sir.

Q. And he pronounced himself satisfied with it?

A. Yes, sir.

Q. Did he then immediately proceed with the business of making his will?

A. Yes, sir. Well, he took the documents from his pocket.

Q. Did you go out into the other room to copy these first two or three clauses?

A. No, sir; I copied them in his room.

Q. With pencil or ink?

A. With ink.

Q. Did you then read them over to him?

A. I did, sir.

Q. Did he pronounce them correct?

A. Yes, sir.

Q. What was the next step?

A. Next he then commenced to dictate to me, which I then took off in pencil.

Q. How long did that last?

A. Well, the first time I think it was two clauses, if I remember right, he dictated to me; and then he told me to go out into the outer office and write them in ink, and do that to those I had previously written, which I did, and came back and read them over to him.

Q. He required you to read them over to him?

A. Yes, sir.

Q. What did he say then about those?

A. He said those were wrong.

Q. What instructions did he give you then?

A. He told me they would have to be written over again.

Q. Did you write them over again?

A. Yes, sir.

Q. Without any change?

A. Yes, sir.

Q. Copied it exactly, word for word?

A. Yes, sir.

Q. What did he say then ?

A. He said that was right.

Q. Did he take the paper and look at it himself before you went out to copy the second time ?

A. The paper, the one I was writing ? Yes, sir.

Q. When you brought it back the second time, did he examine it again ?

A. Yes, sir.

Q. After he pronounced that good, he dictated another clause or so ?

A. After he had dictated another clause, he would seem to forget what he had dictated before, and asked me to read it over to him again, which I would do.

Q. As fast as he dictated, you took it down in pencil ?

A. Yes, sir.

Q. Then you went out into the office, and copied it in ink ?

A. I would write it in pencil first, and then he would tell me to go out into the office, and to copy it in ink.

Q. That process was continued right along, regularly, until the will was completed, was it ?

A. Yes, sir; the evening of the first of March. I was there three days.

Q. Did he make any change in the writing, in the phraseology of any clause, after you had written it in ink ?

A. After I had completed it ?

Q. After you had written it in ink the first time ?

A. No, he did not.

Q. The only changes that he made then, were interspacing the clauses ?

A. Yes, sir, that was all the changes he made.

Q. Placing them in different positions in the instrument ?

A. Yes, sir.

Q. Making different connections ?

A. Yes, sir.

Q. You say that you observed nothing particular in his manner of dictation, except that he hesitated sometimes, and that seemed to arise from his sickness, his feeble health ?

A. Well, he seemed to hesitate, and then he would forget what he had said to me not a minute before. I thought then that it was very strange.

Q. He himself seemed to hesitate, for the purpose of recollection, did he ?

A. Well, I don't know whether it was for the purpose of recollection or not. He closed his eyes, or appeared to me as if he was asleep.

Q. How long would he remain in that condition ?

A. Sometimes fifteen or twenty minutes, sometimes not as long as that.

Q. Did you observe many times that it seemed to be difficult for him to speak, on account of the difficulty of his lungs and throat—trouble and weakness ?

A. He seemed to raise a good deal of phlegm. That was the only difficulty I saw.

Q. Was that going on most of the time ?

A. Yes, sir; almost continually.



Q. Didn't you notice sometimes that he would stop in the midst of a sentence as if from weakness—as though it was difficult for him to articulate the next word he wanted to use?

A. No, sir; I saw nothing of that kind.

Q. Did he cough considerably at the time that you were there?

A. Yes, sir; coughed a great deal.

Q. At frequent intervals?

A. Yes, sir.

Q. And expectorated a great deal?

A. Yes, sir.

Q. In many instances he would be interrupted in the midst of sentences by coughing, wouldn't he?

A. Yes, sir.

Q. While he was dictating?

A. Yes, sir.

Q. Didn't he cough then, sometimes, very violently and at considerable length?

A. Well, no; not then. He would cough perhaps two or three times, and then stop.

Q. After having one of these coughing spells, how long would it usually be before he could speak again, or before he did speak again?

A. Perhaps two or three minutes.

Q. He would sometimes lay down and rest immediately after having one of these coughing spells?

A. No, sir; he would be sitting up. He would throw his head back and remain silent for perhaps a minute or two.

Q. How long did he sit up the first time you were there?

A. He sat up most of the time.

Q. Explain to the jury how he was sitting. You don't mean that he sat up upright in an ordinary chair, do you?

A. He sat in a rocking-chair.

Q. Bolstered up?

A. Bolstered up.

Q. With his head resting on the chair?

A. Yes, sir.

Q. About how many times was Mrs. Hawes in the room while you were there?

A. She used to come in very frequently, passing in and out of the room.

Q. He complained to you very often, didn't he, while this work was going on, of being weak—assigning that as the reason for stopping?

A. He didn't use that expression. He said he was tired.

Q. When he told you not to inform Mrs. Hawes what was going on, did he assign any reason for giving you this instruction?

A. He didn't tell me anything not to inform Mrs. Hawes; no, sir.

Q. What did he say? Did he say anything about concealing what he was doing?

A. One thing that he said was after I had finished the will, as he remarked before, to take it with me.

Q. To avoid its being stolen?

A. He said there were thieves in the house, and it would be taken from him.

Q. You finished your work then on the night of the first day of March?

A. Yes, sir.

Q. The instrument was then complete, and you read it over to him twice?

A. Yes, sir.

Q. Did he make any comments on the different phrases or expressions of the will as it was read to him?

A. No, sir.

Q. Would he interrupt you at all in the progress of reading the instrument?

A. Not the last time; no, sir.

Q. Did he the first time?

A. No, sir; not the first time either, after it was finished he didn't.

Q. Did he require you to read it over to him the second time?

A. He did; yes, sir.

Q. About what time of the day was that?

A. Between six and seven o'clock in the evening.

Q. He didn't intimate to you who he thought would steal the will, did he?

A. No, sir.

Q. Did he make any mention of Mrs. Hawes at all while speaking on the subject?

A. No, sir.

Q. Did he mention any one's name in that portion of his conversation?

A. No, sir; that is the only remark he made to me.

Q. He told you to bring a witness the next morning, did he mention names of any witnesses that he would like to have?

A. No, sir.

Q. Did he say anything to you about the character or standing of the men that you should procure as witnesses?

A. No, sir; I asked him if he had any choice, and he said no; to find some respectable man.

Q. To find some respectable man?

A. Yes, sir; he said he only wanted one witness.

Q. You understood that you were to be one of the witnesses, and he wanted some one to unite with you?

A. Yes, sir.

Q. And the following morning about ten o'clock you returned there; that was the morning of the second of March?

A. Yes, sir.

Q. With P. O. Barry?

A. Yes, sir.

Q. Who is P. O. Barry; do you know him?

A. Yes, sir.

Q. What is his business?

A. He is a clerk in the Recorder's office.

Q. Did Mr. Hawes seem to be acquainted with Mr. Barry?

A. Yes, sir; I believe he used to clerk for him.

Q. How long did the conversation last between Hawes and Barry?

A. A few moments.

Q. What was said in that conversation?

A. Only the ordinary conversation. Mr. Barry said he was sorry to see him so sick. That was about all. Asked him how he was doing, and so forth.

Q. At this time you had the will with you?

A. Yes, sir.

Q. Did Mr. Hawes then ask you for the will?

A. He asked Mr. Barry if he would step out into the office, and then asked me to read the will to him.

Q. Which you did?

A. Which I did; yes, sir.

Q. Then he said what, in regard to the will?

A. He said it was all wrong.

Q. What instruction did he give you then?

A. He told me to put it in his coat pocket.

Q. Hanging by his bed?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir.

Q. Did he tell you wherein it was wrong?

A. No, sir; he said it was wrong; that is the words he used.

Q. Did he say anything to you about Mr. Barry, after Mr. Barry had gone out of the office?

A. No; I asked him then what I should do with the witness; and he says, "send the witness home."

Q. He didn't ask you to read the will in the presence of Mr. Barry?

A. No, sir.

Q. How long did you remain there after he said the will was all wrong?

A. I remained there until—I think it was about two o'clock in the afternoon.

Q. Did you have any further conversation with Mr. Hawes?

A. No, sir; not that day.

Q. During the two days that you were there, or three days, occupied in preparing this will, did he talk with you on any other subject than the will?

A. Not that I recollect. Oh! one day he was sitting on the porch, it was quite a warm day, and he went out and sat on the porch in the rocking-chair; and he asked me to get the *directory* and read to him. I thought that was rather strange; and I got the directory, and he said he wanted me to read over the different associations, the names of the Treasurers, I think, and the Presidents, which I did. I read them all, and finally got, I think it was to the Eight Hour Association, reading them, and he said, "pass that over—no interest."

Q. Was that the only conversation you had on any other subject than the will?

A. The only conversation; yes, sir.

Q. His whole time, then, while you were there, that he was able to attend to it, was occupied in arranging and re-writing and fixing up this will?

A. Yes, sir.

Q. Do you know of his transacting any other business with other persons, during this time?

A. Yes; signing receipts.

Q. Anything else?

A. No, only visitors—people that came to see him.

Q. Do you recollect any of the persons who visited him?

A. Yes, sir.

Q. Who?

A. Mr. Stebbins was one.

Q. Who else?

A. I think there were two Catholic priests. I don't recollect their names now. One was a physician, a stranger to me. I went in, and was there sitting in the office when this physician came. I went in and told Mr. Hawes that there was a physician out there, and he said he didn't want to see him; he knew a damned deal more than the physicians did.

Q. Did you remain in his room during his interview with his physicians?

A. No, sir.

Q. Do you know Mr. Washington Bartlett?

A. Yes, sir.

Q. Did you see him there during that period?

A. I did.

Q. Both days?

A. I think he called twice. I think one was in the afternoon. The other time was in the evening, along about six or seven o'clock.

Q. The evening of the same day?

A. That I do not recollect. It was either that or the next day—the evening of the first.

Q. Was Mr. Stebbins there more than once?

A. He was there twice, I think, to my knowledge.

Q. On different days?

A. On different days.

Q. Who were the Catholic priests?

A. That I do not know. I do not know their names.

Q. Do you recollect any one else who called there during that time?

A. I recollect a lady coming there. Her name I do not know.

Q. Any one else?

A. No one else that I recollect of now, except men coming there to pay bills—rent, I believe it was.

Q. Did he transact his business with them?

A. I wrote the receipts out and took them in to him, and he signed them on two or three occasions.

Q. Did he examine the receipts before he signed them?

A. Yes, sir.

Q. Did you write any letters for him, or transact any other business?

A. No, sir.

Q. Was he particular and precise in the transactions of this business—what he did transact while you were there?

A. He seemed to me so; yes, sir.

Q. He seemed to be very careful, didn't he?

A. Yes, sir.

Q. You spoke in your cross-examination of his dozing off, as you called it, and then starting up suddenly, and asking you why in hell you didn't go on with your work. When he first aroused from his sleep, he seemed to be a little—did he seem a little lost and excited?

A. Yes, sir.

Q. How long would that continue after he was awake?

A. Two or three seconds.

Q. Then he seemed to be perfectly calm again, and continue that way until his strength became exhausted, and he had to give up and go to sleep again?

A. Yes, sir. His eyes would look strange to me when he would wake.

Q. And he was awaked again the same way?

A. Yes, sir.

Q. Did he ask you what you wanted for your services in the way of compensation?

A. There was some arrangement made between Mr. Bartlett and him.

Q. The arrangement was made between Mr. Bartlett and him?

A. Yes, sir.

Q. Did he pay you the stipulated sum?

A. Yes, sir.

Q. He made you go out in the other room, and write a receipt for it?

A. Yes, sir.

Q. Did he examine and read it, when you gave it to him?

A. He did not.

Q. Who paid you the money?

A. He did.

Q. He paid it himself?

A. Yes, sir.

Q. His conduct towards his wife during the time that you were there, was simply that of indifference and want of observation, was it not?

A. It appeared to me so; yes, sir.

Q. You saw nothing which indicated any particular affection, or any particular dislike for her? She came in the room and performed her duties without any conversation, or any—

A. He seemed to be perfectly indifferent to her presence.

Q. Didn't he seem to be generally indifferent to almost everything in the condition in which he was then, except the making of his will?

A. Well; no, sir.

Q. His attention was mostly occupied with that, wasn't it, during all the time that you were there?

A. Yes, sir.

Q. Did he call for Mrs. Hawes on more than one occasion, send for her when he wanted her services?

A. He never called by me—never asked me.

Q. I didn't suppose he did. Did you hear him ask the nurse, or any one else, to call Mrs. Hawes?

A. Not Mrs. Hawes. He asked me to call some of those damn'd women.

Q. Mrs. Hawes always came in voluntarily, didn't she?

A. Yes, sir.

Q. Of her own accord, as far as you know?

A. Yes, sir.

Q. Did Mrs. Hawes know what your business was there?

A. I do not know whether she did or not.

Q. Did you have any conversation with her while you were there?

A. Only spoke to her in the morning, to say good morning—the compliments of the day.

Q. That was all?

A. Yes, sir.

Q. Did you ever have any conversation with Mrs. Hawes, about the will?

A. No, sir.

Q. Or about the disposition which he had made of his property?

A. No, sir.

Q. You say you think him of unsound mind. What do you mean by that? Do you mean to say that his reasoning powers were entirely destroyed?

A. To say that I didn't think he knew what he was doing.

Q. Didn't he direct you, with a great deal of particularity, in drawing, and rewriting, and fixing up his will?

A. Yes, sir.

Q. And you say that he was very careful in the transaction of his business with other people, who came there during that day?

A. He seemed to forget after that.

Q. After that, he seemed to forget?

A. Yes, sir.

Q. What you mean then by saying his mind was unsound, was, he was forgetful?

A. Yes, sir; and weak.

MR. KENNEDY—Q. Were there any other facts, except those you have stated, inducing you to think Mr. Hawes was of unsound mind?

A. That is all my intercourse there.

ARTHUR M. EBBETTS, called for Contestant. Sworn.

*Examined* by MR. BARNES—Q. What is your business, and how long have you pursued it in this city?

A. My present business is coal—thirteen years.

Q. Did you know Mr. and Mrs. Hawes?

A. Yes, sir.

Q. Are either of them in any way connected with you?

A. Mrs. Hawes is an aunt by marriage. I married her niece.

Q. Were you a visitor in Mr. Hawes' family during his lifetime?

A. Yes, sir; occasionally.

Q. Where?

A. On Folsom street, and at the farm at Redwood.

Q. How much were you in the habit of going there? What was the extent of your acquaintance or intimacy with the family?

A. Well, for a little while before I was married, I was there frequently in the evening.

Q. When were you married?

A. I married in August, about seven years ago, I believe. I don't recollect whether it was 1864 or '63—1864, I believe.

Q. Were you or not on intimate terms with the family?

A. Yes, sir.

Q. From the time you commenced to visit the family intimately, until the last you know of Mr. Hawes in his lifetime, did you ever observe any peculiarity in his conduct towards, or treatment of his wife—I want to ask you first, whether you did or not—when was the last time that you saw him?

A. The last time I saw him alive, was about twenty minutes before he died—it was within twenty minutes of his death.

Q. Now from the time when you first made the acquaintance of his family, and had social intercourse with them, down to the time you have mentioned as being the last time you saw him alive, within twenty minutes of his death, did you at any time observe any peculiarity in Mr. Hawes' conduct towards, or treatment of his wife?

A. I did.

Q. Did you observe it when you first made the acquaintance of the family, or at a later time?

A. Well, at first; from the first.

Q. From the first that you knew them?

A. Yes, sir.

Q. Now what was that peculiarity?

A. Well, he treated his wife contemptuously from the first—did not treat her as a lady, or as a wife.

Q. What would he do to her, or say to her? Give the jury an idea now; state what he did, so that they can understand what his treatment of her was?

A. Well, I cannot tell you that, because it is just one of those things that was more in his manner than in words. I saw them very little together during the time I knew him—very little together, but I never saw them together where he was even decently polite to her—always spoke to her with a sneer on his face, and with contempt, and at times speak of her as “that woman.” I don’t know as I ever heard him say, “Mrs. Hawes.”

Q. Did you ever have any conversation with him about her?

A. I did, once; not about her. If you want the conversation, I can give it.

Q. About his domestic affairs?

A. Yes, sir; if you want to know the conversation, I can tell you how it came about. My mother-in-law, who is Mrs. Hawes’ sister, is living East, and since the war had lost her money, or lost money during the war, and I wanted to help her, and I knew that Mr. Hawes—I thought that Mr. Hawes would assist me in the matter, and I went to him with the proposition. I wanted to buy the house she was living in, which was to cost about two thousand dollars.

Q. Where was that?

A. In Maysville, Kentucky. I went to his house, and he was walking with his little girl, about six o’clock—Carrie, walking up and down, and I told him I wanted to see him. I never attempted to be familiar with him. He invited me into his office, and I stated my business to him, that his wife’s sister, and my mother-in-law was in a distressed condition, liable to be turned out of her house if they raised the rent, and it would not be much of a matter for us to send her two thousand dollars to buy the house, so that as far as the home was concerned, she would have it. He declared, he said that he should do nothing directly or indirectly for any one that would be any satisfaction to his wife. That it was his aim in life to make everything as unpleasant for her as possible. That was the answer I got from him; so after that, Mr. Hawes’ friendship and mine was very slight, and our conversation was very slight. I kept away from him, in fact, whenever I could.

Q. What time was this?

A. I think that was in 1866.

Q. Whenever you have seen them together, during the years you have known the family, what has been Mrs. Hawes’ conduct towards him, and her deportment and treatment of him?

A. Always kind. I never saw anything different.

Q. How much were you with him, during the latter part of his life?



A. What do you mean? After he came from Europe? I don't suppose that I saw Mr. Hawes from the day I was married, up to the time he went to Europe, over ten times. I used to go to his house, and would not meet him; he would not be there, and I would not ask for him. During the whole time that I was visiting my wife before I was married, I suppose for six weeks I never saw him. His wife told me one day, "You had better see Mr. Hawes; you know what kind of a man he is, and even after the minister is here, and everybody in the house, he might break the whole thing up, and turn them out of the house." Says I, "I am not going to hunt him in the bed-room, but when I meet him I will speak to him. I acknowledge," said I, "the justice of your remark, but I won't run after him." So the thing ran on until a few minutes before I was married; and he came into the sitting-room as I was putting on my gloves, and I said to him, smiling, "I have forgotten an important part of this arrangement; I have not asked you." He said, "It is too late now to stop it." That is all that passed.

Q. During his last sickness, how much were you at the house?

A. Well, I was at the house, sitting up with him two or three nights, and parts of two or three days, I believe. I was not very well myself, or maybe I might have been there oftener. I had lost my boy a short time before, and my health was not very good.

Q. Did you ever, down to the last you saw of Mr. Hawes, see him exhibit any change or difference of feeling from that you have stated, toward his wife?

A. No, sir, it seemed to increase after he came back from Europe; the antipathy seemed to increase.

Q. How much conversation did you have with him after he got back, if any?

A. Well, very little. I went to the ranch once, I believe, before he came to the city for the last time, and he was there, and I always kept out of his way; and one day, it was Sunday—I generally went down to spend Sunday, if I went at all, and I was out on the porch smoking, and he came out very much excited, and I paid no attention to him, but went on smoking there; and he commenced about the French people, the first intimation that I had he was going to speak. He said they were a set of liars, and scoundrels, and thieves, and that Louis Napoleon was far supreme over all of them as such—far ahead of any of them as such. I never asked him his reasons for anything, and he made the further remark—

Q. [Interrupting.] Was that the first time you had seen him since he got home from Europe?

A. Yes, sir.

Q. Did he say "How do you do?" to you?

A. Oh, yes, sir; he spoke to me always when I went into the house. And he said that he would give a hundred thousand dollars, and repeated it several times over—this was just at the commencement of the war in Europe—if his one hundred thousand dollars could whip Louis Napoleon, he would give them willingly to assist or aid any other power. I judge that was what he meant.

Q. Did he ever talk at all with you about the schemes and plans that he had?

A. No, not in regard to his estate, or anything of that kind. He spoke of his house once or twice, and the road he was going to build from the house.

Q. What was there about that?

A. I thought he was going to have a very extravagant road. He said he was going to spend twenty or thirty thousand dollars on a roadway from his house.

Q. On a roadway from his house to the county road?

A. It was to lead down, of course, into Redwood—down into the county road.

Q. What kind of a road did he say he was going to build?

A. A macadamized road, with a splendid avenue of trees on each side, as the grade went. It wound so that the grade would be almost imperceptible, and it would have to turn in such a way, that the view would constantly be changing.

Q. What did he calculate the expense of that to be?

A. I understood him from thirty to forty thousand dollars.

Q. That was for his private residence?

A. I thought that was a little extravagant. I did not believe this house cost over ten thousand dollars. I did not answer him, or make any objection to it.

Q. What kind of a house was he building down there? How expensive?

A. I suppose a ten thousand dollar house.

Q. He was going to have a forty thousand dollar avenue?

A. Yes, sir.

Q. Anything further? Did he ever tell you about the "Chamber of Commerce," as the witness called it yesterday, or Chamber of Industry, to you?

A. No, sir.

Q. "The Commerce of Industry," the witness called it yesterday—the one where she was to have a room in it. Did he ever say anything to you about that institution?

A. No, sir.

Q. Or Mont Eagle University?

A. No, sir.

Q. Now when you went down there at his place at Redwood City, what time was this when he told you about this ten thousand dollar house and forty thousand dollar road?

A. Oh, there is another circumstance, Mr. Barnes, that I would like to mention, in connection with my visit to Mr. Hawes. Summer before last, on the thirty-first of July, I went East, or I did go East, and two days before I was going, I had a message come from Mr. Hawes; I don't know whom it came through, but I got it anyway, to go to the ranch. He wanted to see me. I got there in the afternoon train, the last train. I was very busy—

Q. [Interrupting]—That was the Summer of 1869?

A. That was the Summer of 1869—no, the Summer of 1870. I went there and found him busily overhauling some papers, and some things. He had an old trunk out, and I asked him what he wanted, and he said he wanted me to take Horace Caldwell East; that he was going to send him to Europe with his boy. I did not object, and he got out a paper and pencil, and as I had never been over the road, and he had, he figured out the expenses of the trip, so far as the passage money was concerned. We had some discourse about the state-room money, the car money, sleeping apartments, and we got that down; I forget what the amount was; but that was all that was there. I did

not think myself, at that time, anything about the living on the road, and I left him and went to bed—no, just before I left him and went to bed, Horace was in the room. He called him up, and took a purse out, and got a ten cent and a five cent piece, and said to him: “Horace, here is some money to spend on the road.” So the next morning, the train left, I believe, at half-past seven, or twenty minutes after seven, and I went into his room, and he was in bed yet, and I told him, said I: “You need not bother getting up to get me any money. I will buy his ticket, and you can send me a check.” I got into San Francisco on that train; I think it takes an hour to come, and about a quarter of an hour to get down to the place, and when I got there, I got a telegram from him. I think the wording of it is: “Horace is not going;” and during the next half hour, I got a message from Mr. Bates to stop proceedings, and a message from somebody else to stop proceedings. I don’t know who now. I never got any explanation, and I don’t know yet what the reason was, but he did not go with me. I went East, and those were the two times, the only two times that I recollect meeting Mr. Hawes at Redwood City latterly.

Q. What time was it, after you had the interview with him on that April Sunday, when he told you about this ten thousand dollar house and the forty thousand dollar road?

A. That was not at his house; that was—I think he told me that some six weeks before he died, at his own house on Folsom street.

Q. Did he say anything to you then of the Mont Eagle University absorbing all this place down there?

A. No, sir.

Q. Never told you anything about it?

A. No; I don’t think that I ever—he looked upon me as a friend of his wife, and he never had any conversation with me, and I don’t think in years I ever mentioned his wife’s name to him.

Q. The only time was in the year 1866, when you went to him, to get him to help her sister who was in Kentucky?

A. Yes, sir; and then I did not mention his wife’s name to him. I knew his peculiarity at the time, you know.

Q. How did you know it?

A. I could not help knowing it; being so intimate with the family, I believed what I heard. I know it in that way.

Q. I wish you would repeat that. You were interrupting these gentlemen who are standing behind me.

A. I was very careful on that subject, because, from my intimacy with the family, I had heard how he was treating his wife on other occasions, and consequently, I was very careful, wishing not to have any trouble with him unnecessarily, not to mention his wife’s name to him; and I don’t know as I ever did.

Q. On this occasion, when he spoke in this way about his wife, in 1866, was the only one that subject was discussed?

A. Yes, sir; I don’t think he ever mentioned his wife’s name to me after that.

Q. Did you ever have any conversation with him, in which he spoke of himself as compared with the Saviour of mankind?

A. One day I was going to San José, I think I was going off fishing or shooting, three or four of us together in a party, and I met Mr. Hawes on the platform, and I did not want to have him with me, because he was not so convivial as I wanted my party to be, and I suggested to him that he had not better go into the smoking car, it would

be bad for his lungs. "No," he said, he used to smoke a great deal in his younger days, and he could not stand it very well; and he beckoned to me, and made me sit down aside of him, and to stop him from talking, I bought him a "Bulletin"; and it was just after the Chinese dinner, at which Governor Haight presided, and he read the article and turned to me, and says he, "This is a great idea, this toasting business," reading the toasts over. He says to me, "I have examined back the records a long ways, and I never heard that Horace Hawes or Jesus Christ were ever toasted." I did not contradict that.

Q. Is that the whole of it?

A. Yes, sir.

Q. What time was that?

A. Oh, I could not tell you that; three or four years ago; at least, four years ago.

*Cross-Examination by MR. PRATT*—Q. You disliked Hawes personally, didn't you, Mr. Ebbetts?

A. Well, I had no love for him, sir. I didn't have any dislike for him; I never hated him.

Q. When you were visiting his family, before you married, what was the purpose of those visits? Did you go there to see Mr. Hawes?

A. No, sir; I went there to see my present wife.

Q. You saw very little of him on those occasions?

A. I don't recollect that I saw him once until the day I was married.

Q. Were you ever intimate with Mr. Hawes himself?

A. No, sir. No, I went down the coast on the steamer with Mr. Hawes, I think it was in 1853, and now I am under the impression, I won't say I am right, that I had the same stateroom with him; and he was an older man than I was, irritable and cross, and he seemed to dislike any fun that was going on, and I had very little to say to him after that. I used to speak to him, and bow to him, when I met him in the street.

Q. When you say you observed peculiarities from the first, in his treatment of his wife, you mean from your first acquaintance with Mr. Hawes?

A. From the first time I ever saw them together.

Q. Was that soon after his marriage?

A. His marriage? No, sir; soon after mine.

Q. That was in 1863 or '64 then?

A. Yes, sir.

Q. You characterized his treatment of her as being contemptuous, did I understand you to say?

A. I said his appearance was that, when he spoke to her, or looked at her. There was a contemptuous expression on his face.

Q. You never heard him use any rude or abusive language to her?

A. Well, I have heard him—I never heard him d—n her, or abuse her right to her face, but I have heard him occasionally, when he spoke to her, speak to her in a tone that was—well, it was insulting.

Q. It was his manner towards her, and not what he said, that you characterized as being contemptuous?

A. More in the little I saw of them together, in his manner; yes, sir.

Q. Mr. Hawes was a man of exceeding vanity?

MR. BARNES—Exceeding what? Urbanity?

MR. PRATT—He was a very vain man, egotistical.

A. He was vain in one way. I don't think a man who paid so little attention to his personal appearance could be a vain man. I think he was vain of his name, vain of Horace Hawes as Horace Hawes, but he was not what I would call vain. He did not care how he looked, how he acted.

Q. He was, then, of his superiority, as he thought, over other men, wasn't he?

A. Yes, sir; I think so. .

Q. Did you ever see him treat anyone else in that sneering and contemptuous manner?

A. Generally, when he spoke of any one, it was in that way, if he differed with any one.

Q. Did you ever hear him speak well of any one, in praise of any person?

A. I don't know as I ever have.

Q. He generally spoke in a disparaging manner, as you say, sneering, and a contemptuous manner of people with whom he came in contact.

A. Of many; he generalized. He didn't often particularize with me. But with me, in his conversation with me, why, there was never anything out of the way. I could not object to a single word he ever made to me, or to a single occasion of his doing so.

MR. BARNES—Q. You mean to you personally?

A. I mean to me, personally. I say, I cannot say, I cannot recollect a single time when he ever treated me excepting with perfect politeness.

MR. PRATT—Q. When you applied to him for two thousand dollars to assist your mother-in-law—

A. [Interrupting.] I did not ask him for that two thousand dollars. I asked him to help me make up the sum. My impression was to have him help me out with the matter. I went down with the intention of giving at least five hundred dollars, or even half if he would not give fifteen hundred.

Q. Did he assign any reason for declining to assist you, except that it would gratify his wife?

A. No, sir.

Q. That was the only reason he did assign?

A. Yes, sir.

Q. Did he say anything to you of having contributed to aid her and other friends of the family?

A. No, sir.

Q. He made no allusion to that?

A. No, sir.

Q. He did not make any reference to the fact that the parties who had suffered were some way implicated in the rebellion? Did he say anything about that at all?

A. No, sir; he did not. You have got a wrong idea about Mr. Hawes' ideas of that matter. If you want my impressions on that subject—

Q. [Interrupting.] I only asked you the question, whether he made any reference to that subject at all?

A. No, sir.

HORACE CALDWELL, called for Contestant. Sworn.

Examined by MR. BARNES.—Q. How old are you?

- A. A little over thirteen, sir.
- Q. Dr. Caldwell is your father, I believe?
- A. Yes, sir.
- Q. Mr. Hawes was what relation to you?
- A. He was my uncle, sir, by marriage.
- Q. Did you know little Horace?
- A. Yes, sir.
- Q. Did you go traveling with him and his father?
- A. Yes, sir.
- Q. Where did you go?
- A. We went to France.
- Q. Where from here?
- A. We went to New York.
- Q. How long did you remain in New York?
- A. I was there about four days.
- Q. Where did you stay at New York?
- A. At the New York Hotel.
- Q. How did you pass your time there?
- A. We had a very pleasant time.
- Q. What did you do?
- A. He took us out, sir; showed us around.
- Q. What did you go to see?
- A. I didn't go anywhere; he just let us walk the streets.
- Q. Did you go by steamer or sailing vessel to Europe?
- A. By steamer.
- Q. Do you remember the name of it?
- A. The "Lafayette."
- Q. Did you go direct to France, or England?
- A. To France, sir.
- Q. What port?
- A. Havre.
- Q. What did you do on the voyage out?
- A. We studied French.
- Q. How much?
- A. Studied it all the time.
- Q. Well, how do you mean by all the time? From the time you were up in the morning until you went to bed?
- A. Yes, sir.
- Q. How did you study it?
- A. We studied it awhile, and then recited to each other.
- Q. By whose direction was that?
- A. Mr. Hawes'.
- Q. Who set the lessons?
- A. He did, sir.
- Q. What books did you have?
- A. Chouquet's First Lessons in French.
- Q. He set the lessons—did you ever have any time to study—some time that you were to study those lessons?
- A. Sometimes he would give us a certain time to study it in, and he would not ask us to recite all day. Sometimes he would not ask us to recite at all.
- Q. When you did recite, who heard you?
- A. We recited to each other, sometimes, and then we recited to him.



Q. Was he a French scholar?

A. Not a very good one, sir.

Q. How much of the time, while you were going over in the steamer, did he require you and Horace to study French?

A. The first three or four days we didn't study at all.

Q. Why not?

A. I suppose he thought we were sick.

Q. Well, after that?

A. After that, he kept us pretty close to study.

Q. When you got to Havre, where did you go?

A. We went—we had bought tickets for Rouen, and from there we found the cars so pleasant, we went on to Paris.

Q. How long did you stay in Paris?

A. We were there about five months; sometimes alone, because he staid there only a month, I guess, or longer.

Q. Now when he went away, where did he leave you and Horace?

A. He left us in charge of some French people.

Q. Whereabouts?

A. In Paris.

Q. Do you remember the place, the street, or square it was?

A. It was a private family in the Rue Balzac.

Q. How long was he gone from you?

A. He was gone about four months, I guess.

Q. Did you know where he was in the meantime?

A. Yes, sir; he was in Cannes, the southern part of France.

Q. During that four months that he left you there in Paris, did you go to school?

A. Yes, sir.

Q. Where?

A. It was in the private family. The gentleman of the family taught us.

Q. What did you study?

A. Studied French, and Latin, and German.

Q. And after about three months he came back?

A. He sent for us.

Q. Whom did he send?

A. I think he telegraphed for us, and M. De Callais sent us in charge of some German noblemen.

Q. Where to?

A. To Cannes.

Q. Did he meet you there?

A. No, sir; he was sick, and he could not come out; he sent his boy for us.

Q. Then what did you do? Did you go to the place where he lived?

A. Yes, sir.

Q. Where did he live?

A. I don't remember the name of the street. It was outside of the town, in a villa. He lived in a villa out of town, a private boarding house.

Q. Now go on and state to the jury how your time was passed there, what he required of you?

A. He required us to rise at five o'clock every morning, and study until he told us to recite. If we recited our lesson well, he would give



us probably fifteen minutes, or a half hour or an hour to play. He did not have any regular time, and on Saturday, if we knew our lessons, he would give us half a day to play.

Q. How was the rest of the time spent?

A. That is the way.

Q. While you were there?

A. At times he would shut us up in our rooms.

Q. That is what I want to get at. How many days at one time did he ever keep you shut up?

A. I think he kept me shut up nine or ten days at one time.

Q. What was the offense of which you were guilty?

A. My cousin and I were talking English. He did not allow us to talk English to each other, and my cousin spoke to me, and I did not understand what he said, and I said, "What?" And he called us in.

Q. What? I did not understand you.

A. My cousin said to me something, and I answered him in English, and he called out to us, and asked me if we were talking English, and I said "Yes." He then said, "Go to your rooms and lock the door." Our bed-rooms were adjoining each other, and he brought me the key, and I locked it, and gave him the key from the outside, and he kept me there nine or ten days.

Q. Did he visit you at all, during that time?

A. No, sir.

Q. How did you get your food?

A. The only room he allowed me to go into, was the dining room. That was next to my room, and I would go in there and get my dinner and breakfast. I used to go in there and get my meals.

Q. Where was little Horace during all this time?

A. He was in his room; but Mr. Hawes could find no nurse for him, and he told him to come out and take care of him part of the time.

Q. What?

A. Horace was with his father most of the time.

Q. Was little Horace all the attendant his father had, during that sickness?

A. Yes, sir, except when he had let me out after these nine or ten days.

Q. What did you do for him there?

A. At times we cooked for him, when he would not get a cook.

Q. What did you cook for him?

A. Well, we cooked his meat and vegetables, and soup.

Q. What did you know about cooking? Anything?

A. Yes, sir; what I learned from home.

Q. How did he like your cooking?

A. He said it was the best he ever had.

Q. What did he call this shutting you up in your room?

A. I don't know that he called it anything. He just told me to go to the room and stay there, until he told me to come out.

Q. He gave it no name, that kind of discipline, did he?

A. No, sir.

Q. How long were you at Cannes?

A. I was there about the same time we were at Paris—about five months.

Q. How often during that time, did he shut you up in your room?

A. Well, sometimes, he would shut me up all day. Every one,

two, or three days, he would let me out, and I would do something, and he would shut me up again.

Q. How about Horace?

A. He shut him up too; but he was the only attendant he had when I was shut up, and he would let him out.

Q. How old was Horace at that time?

A. He was eleven, sir.

Q. Did he do any work for him?

A. Yes, sir; he helped me cook.

Q. How did you divide the labor between you?

A. He would not allow us to go together anywhere, at all.

Q. Why not?

A. I don't know, sir.

Q. How do you mean he would not allow you to go together?

A. He would not allow us to even see each other hardly, not to speak to each other.

Q. Who went to the market to buy the grub?

A. We took turns, every other day.

Q. You would go alone one day to market and get the food, and the next day he would go?

A. Yes, sir.

Q. And then you joined forces and cooked it?

A. No, sir; I had to cook it separate.

Q. Each one cooked by himself?

A. Yes, sir.

Q. That is, you were cooking one day, and Horace cooked the next?

A. Yes, sir; but then, sometimes we would get together and cook.

Q. For how long a time did you two boys do Mr. Hawes' cooking and nursing?

A. Nearly two months, sir, I guess.

Q. How much of the time that you were there in Cannes, did you and Horace spend there in confinement in your room, or separated from each other?

A. About two thirds of the time, I guess, or longer.

Q. While you were there at Cannes, did you have any teachers?

A. Yes, sir; we had one. He was a German, sir.

Q. What did he teach?

A. He taught us French and Latin.

Q. Did he stay all the time you were there?

A. No, sir; he left. He said he had an engagement. He was to get three thousand francs a year, and he went off, and that was the last we heard of him. He told the hotel keeper and the boot maker to come the next day, and he would pay them, but he went off the day before, and he did not pay them.

Q. How long did you have him?

A. We had him nearly all the time we were there.

Q. How often did he come?

A. He stayed there with us.

Q. He lived there with you?

A. Yes, sir.

Q. What did he do, anything beside teach you boys?

A. That is all.

Q. Who cooked for him?

A. We had a cook while he was there.

Q. How much of the time was he there?

A. I guess he was there about two months, I think.

Q. And for the balance of the three or four months that you remained, you and Horace did all the cooking?

A. Most of it; yes, sir. We had a nurse once in a while, and the nurse would do the cooking; but she would not stay.

Q. How long would the nurse stay?

A. Two or three days at a time.

Q. How did she come to go away?

A. Mr. Hawes' meanness.

Q. Could not get along with him?

A. No, sir.

Q. Let me ask you how his temper was with reference to you and Horace?

A. It was very cross, sir.

Q. Did he give way much to his temper?

A. Yes, sir; there was no day passed but he done something.

Q. What would he do?

A. If we did something he did not like, he would come at us with a chair, or something; a stick, or anything he could lay his hand on. One day he threatened to cut our throats.

Q. What was that for?

A. I don't remember, sir, what it was for. I think we were sitting by a window, studying our lessons I know, and I think we were looking out of the window at some boys that we played with there, and he told us if we didn't study the lessons, he would cut our throats with the knife he was eating with; and he threw down his knife and didn't eat any more.

Q. Did he ever chase you and Horace about?

A. Yes, sir.

Q. Describe that?

A. Sometimes he would be in bed, and we would go to play in the other room, and he would come out before we would know it, with a chair, a light cane-bottomed French chair, and come after us with one of those; and the sitting-room was rather crowded with furniture, and we would dodge around that until he got tired out, and then he would sit down and begin to curse us.

Q. Now, what kind of language did he use to you boys, when he got into that frame of mind?

A. The same that has been used all along here.

Q. I want you to tell the jury what he called you and his boy?

A. He called us "d—d devils," and everything that would cross his mind: "imps of h—l."

Q. Anything else?

A. He called us every name any man could think of.

Q. Go on. I want you to say how he talked to you?

A. He called us scoundrels; G—d d—d scoundrels; everything of that kind. I cannot remember all, so much of it.

Q. How long did you stay at Cannes in this way?

A. We were there about five months.

Q. Then where did you go?

A. Then we went to Paris.

Q. When you left Cannes to come away, do you remember anything that happened at the depot?

A. Yes, sir.

Q. What was it?

A. There was a servant girl, that he promised to take to Avignon. He told her he would take her that far, and she said she had all her relations there; and when we went to leave there for Lyons, she followed us down to the depot, and got a policeman to watch us. I suppose she had told him something; that we were thieves or robbers; and when we went to get on the cars, we had a rather large load of shawls and packages, and I was carrying—my cousin and I were carrying a satchel between us. It was rather a heavy load, and just as we were getting out, she snatched the satchel, and we held it as long as we could, but she snatched it with her hands, and we didn't let go until the strap broke and ran through our hands; and she started off with it; and when the policeman went after her, he brought it back, and she tried to get into the cars, but—

Q. [Interrupting]—Where was Mr. Hawes during all this time?

A. He was with us, cursing at her.

Q. What did he say?

A. There was a great many English people in the depot at the time, and the policeman started after her, the gens d'armes there, and Mr. Hawes sent him after the girl.

Q. What was the difficulty between Mr. Hawes and the girl, if any; do you know?

A. All I know is, that she said she didn't have no relations there in Avignon, and she had told us at Cannes, that she had all her relations there, and he refused to get her a ticket to where we were going. She said that Mr. Hawes told her that he was going to take her to America. She told the policeman that Mr. Hawes said that he would take her to America with him. He had made several nurses lose their places by telling them that.

Q. How long had this girl been with you, or with Mr. Hawes, when you left Cannes—had she been living with you?

A. Yes, sir; she had been living there some time.

Q. Do you know whether or not he did promise to take her to America?

A. He promised at times, and then he told her that he could not do it; that he did not have enough money; it would cost too much.

Q. When you came back to Paris, how long did you stay there?

A. We staid there a day and night.

Q. Then where did you go?

A. We went to Havre.

Q. And took ship again?

A. Yes, sir; a steamer.

Q. The same vessel?

A. No, sir; it was another vessel, a Hamburg steamer; the "Harmonia," a Hamburg steamer.

Q. For New York?

A. Yes, sir.

Q. Did anything peculiar happen on the voyage home?

A. Not very peculiar; it was like him. He made us get up at four o'clock every day, and study all day. The only play we got was what we took while he was sick from sea-sickness.

Q. When he was sea-sick, you got a little play, and when he was able to be up and about, he kept you studying?

A. Yes, sir.

Q. What?

- A. Studying French.
- Q. What else did you study beside French?
- A. That is all; we only studied French.
- Q. During the whole time you were gone?
- A. Yes, sir. While we were on the Continent, we studied French, Latin, and German; but on the steamer we only studied French.
- Q. How many hours a day did he keep you at it?
- A. From four until we went to bed, about nine o'clock at night.
- Q. Was Horace there?
- A. Yes, sir.
- Q. Did he bring Horace to New York?
- A. Yes, sir.
- Q. What time did you get to New York?
- A. We got there about ten days after we left Havre.
- Q. Do you remember whether it was in the month of May, that you got to New York?
- A. It was on the eleventh of May.
- Q. How long did you stay there?
- A. We stayed in New York two or three days, I think.
- Q. Where did you go then?
- A. Then we went—Mr. Hawes bought my ticket for California, and then we went to Olean. He sent Horace and I to Olean, and he went to Philadelphia.
- Q. You and Horace started off, and traveled by yourselves, to where?
- A. Olean, New York.
- Q. Where is that?
- A. In New York.
- Q. How did you get there?
- A. We went on the cars.
- Q. What cars?
- A. The Erie Railroad.
- Q. What did you go there for?
- A. Mr. Hawes' sister was living there, Mrs. Martin. He sent us there to stay until he came.
- Q. How long did you stay there?
- A. A little over a month, I think.
- Q. Was Mr. Hawes there?
- A. No, sir; he did not come until three or four days before we left.
- Q. Then where did you go?
- A. Then we went by Cleveland to Toledo, and he left me in charge of some gentleman named Mr. Bartlett.
- Q. Then where did you go?
- A. Then I went to Chicago, and stayed there two or three days waiting for Mr. Howard.
- Q. By yourself?
- A. Yes, sir.
- Q. And then came on from there, home?
- A. Yes, sir.
- Q. Where did you part with Horace?
- A. At Toledo.
- Q. Who had him at that time?
- A. Mr. Hawes.
- Q. Has little Horace ever been back since?

A. Where?

Q. Here.

A. Yes, sir.

Q. Did Mr. Hawes say anything to you about him, or what he was going to do with him, in your presence?

A. He said he was going to send him back to Europe, to Germany.

Q. Did Mr. Hawes ever say anything to him in your presence, about anybody here at home?

A. Not in my presence, exactly, but I heard him talking in his room in Cannes. He was talking pretty loud; he had sent me out to read the history of France through, and I finished it in about two hours; and I heard him talking loud, and I listened, and he was talking about Mrs. Hawes.

Q. What did he say?

A. He said that while she was in San Francisco, that she visited houses of ill-fame.

Q. Whom was he telling that to?

A. To Horace.

Q. To his son?

A. Yes, sir.

Q. And about eleven years old?

A. Yes, sir.

Q. That she visited houses of ill-fame in San Francisco?

A. She run too much with Mr. Fitzgerald.

Q. Anything more?

A. I left then.

Q. Do you know anything about his punishing or whipping Horace while you were in Europe?

A. He whipped us both every day.

Q. Well, I want you to tell about that?

A. Several times; he told us every morning to open our windows, and sometimes we would have to go out before—we wouldn't do it anyhow, and he would be in there looking around, in his night shirt; and one morning I went out and left my window closed, and I came back to open it, and the first thing I knew he had me by the head. He asked me while he was beating me, if I would ever forget it again, and I told him no. He did not seem satisfied with my telling him that, but he kept on beating me, and at last, shoved me into the room.

Q. How much did he whip little Horace?

A. I guess he whipped us about equal.

Q. He made an even thing on that?

A. I guess.

Q. No partiality in that respect?

A. No, sir; not that I know of.

Q. You felt that you got your share?

A. I guess I did.

Q. Were the things for which he inflicted bodily punishment, always the same kind of things as you mention now?

A. No, sir; not always the same thing.

Q. I mean the same thing in degree, but not in kind—no more serious offenses than that?

A. No, sir.

Q. Upon what occasions, and for what provocation, would he use

to you and his son the profane and indecent language that you have mentioned?

A. While we were studying, if we looked out of the window, or anything, or if we didn't know our lesson, or anything that he did not like.

Q. Had you been much to school before you went to Europe?

A. Yes, sir; I had been to a great many different schools.

Q. What school do you go to now?

A. To the Oakland Military Academy.

Q. That is McClure's school, is it?

A. Yes, sir.

Q. You say that Mr. Hawes gave you and Horace your lessons all around?

A. Yes, sir.

Q. How did those lessons compare in length to the amount of study required in ordinary schools?

A. I suppose about five or six times as long. He gave us twenty or thirty pages to learn.

Q. While you were in Paris with him, did he take you out to see anything—any places of amusement, or galleries, or anything like that?

A. He hired a man to take us out, and while he was there he accompanied us, sometimes went with us. We did not get much chance to see anything, because he soon got tired out.

Q. You would have to all go home then?

A. Yes, sir.

A JUROR—Q. The second time you left San Francisco, and made the trip to Europe and back, how were you off for pocket money and expenses?

A. He gave Horace two dollars and a half, and he gave me a dollar. I have got that dollar yet.

Q. All the time that you were away?

A. Yes, sir; he gave us plenty of sous to throw away to the poor children, but never gave us any to spend, except that dollar, and I have got that dollar yet.

MR. BARNES—Q. Do you remember anybody who came over in the steamer with you from Havre, who is here in town now?

A. Yes, sir; Major McClure and his aunt. His aunt is not here, but he is here himself.

Q. Here in San Francisco?

A. Yes, sir; in the Court room.

Q. Is he in any way connected with the gentleman who keeps the school where you are?

A. Yes, sir; he is his son.

Q. He came home with you and Horace on the steamer from Europe?

A. Yes, sir.

Q. During the time you were there at these lessons you speak of?

A. Yes, sir.

Cross-Examination by MR. PRATT—Q. Did you study anything else beside French while you were there?

A. Latin and German, while I was in Paris.

Q. That was in Paris?

A. Yes, sir.



Q. Did you study anything besides French while you were at Cannes?

A. Yes, sir; French and Latin.

Q. When did you have this German teacher; when you first went to Cannes?

A. No, sir; it was a little while after we went there, sir; I don't remember how long exactly.

Q. About how long, as near as you can judge?

A. Maybe a month, or a little over, sir. I don't think I can remember.

Q. Maybe a month, or a little over?

A. Or less than a month; I don't know exactly.

Q. How long did the teacher remain with you?

A. I think he remained about two months, or a little less, sir. I don't exactly remember the date.

Q. How long had this nurse-girl been with you who followed you, and had the difficulty at the depot?

A. She had been with us, I do not think quite a month.

Q. You say Mr. Hawes whipped you and Horace every day?

A. Yes, sir; sometimes he would not whip us on Sundays.

Q. He would whip you every day, except Sunday?

A. Sometimes he would give us whippings on Sundays.

Q. What did he generally whip you with?

A. Sometimes with his hand, sometimes with a chair, and sometimes with a stick.

Q. Did he leave any marks or bruises on you?

A. Yes, sir.

Q. Did he hurt you pretty badly sometimes.

A. Yes, sir; but he never made us cry though.

Q. Mr. Hawes was very sick while he was there, wasn't he?

A. At times, he was.

Q. Was your German teacher there at the time Mr. Hawes had you shut up eight or nine days?

A. Yes, sir; he was.

Q. Did you continue your studies during that time?

A. No, sir; only to write in my journal, sir.

Q. You went to the dining-room regularly for your meals, did you?

A. Yes, sir.

Q. Was this the same room in which you slept, where he kept you shut up?

A. Yes, sir.

Q. Did he ever come to your room during this confinement?

A. No, sir; not during the nine or ten days I was shut up.

Q. What studies are you pursuing now at school?

A. I am studying the general course of schools and academies, and studying French.

Q. How many different branches or studies does the course embrace? How many lessons or recitations do you have for each day?

A. About five or six, sir.

Q. Do you recollect how many different nurses or cooks you had while you were at Cannes?

A. No, sir; I don't exactly remember.

Q. Three or four?

A. *I think we had four, sir; I don't exactly remember.*

Q. How long did they usually stay?

A. Some stayed longer than others; some stayed about a month, and some stayed a shorter time.

Q. What was the next longest time?

A. It was about three weeks, sir.

Q. One stayed a month?

A. Sometimes.

Q. And one stayed three weeks. There was a number that stayed a month, you say?

A. I don't know, sir; I don't remember exactly, how long a time they stayed; they might have stayed over a month; I don't know about that.

Q. Another stayed three weeks?

A. Yes, sir.

Q. How long did the others stay?

A. They stayed different times. I don't think they stayed the same length of time.

Q. When a nurse left, did Mr. Hawes immediately try to procure another one?

A. No, sir.

Q. He instructed you and Horace not to speak English at all, did he?

A. Yes, sir. On the first, though, he told us we could talk English in the sitting rooms, where he generally gave us our whippings. And then he told us we could not talk at all.

MR. BALDWIN—I would like to ask you one question, concerning the time when you said Mr. Hawes was violent towards you, when he threatened to cut your throats?

A. Yes, sir.

Q. You knew him very well; you knew his disposition very well, didn't you? You had been acquainted with him a long time?

A. Yes, sir.

Q. Did he say that in such a manner, that you feared he would put it into execution?

A. Yes, he had his knife in his hand, ready to rise.

Q. Did you fear that he would do so?

A. Yes, sir; I was kind of afraid. I knew that I could get out of the way, if he should get at us, because we were sitting right by the open window.

Q. Do I understand you that you had the impression that he would do so?

A. Yes, sir.

Q. You had that fear of him all the time?

A. Not all the time, sir; I always watched him. Whenever I could see that he was getting very violent, I would always get near where I could escape.

Q. You always kept a loop-hole to creep out?

A. Yes, sir.

[Here the Court adjourns till one o'clock, P. M.]

#### AFTERNOON.

A. T. McCLURE called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. Where do you reside?

A. In San Francisco.

Q. How long have you lived here ?

A. It has been about twenty years since I first came here. I have lived part of the time, however, at Redwood, San Mateo County.

Q. Then you have lived at Redwood City ?

A. Yes, sir.

Q. How much of the time ?

A. Twelve years.

Q. From what year to what year ?

A. From 1856 to 1868.

Q. And in 1868 you came up here ?

A. In 1868 I went East and then came back here.

Q. When you resumed practice again it was here ?

A. Yes, sir.

Q. You have been engaged during that time in this State, in those places, in the general practice of medicine and surgery ?

A. Yes, sir.

Q. Did you know the late Horace Hawes, deceased, in his lifetime ?

A. I did, sir.

Q. Where did you make his acquaintance ?

A. I made his acquaintance here. Did you ask me when ?

Q. Where and when ?

A. In 1855.

Q. Was it a professional acquaintance you made with him, or merely social ?

A. Social and business together.

Q. Were you at any time his medical adviser ?

A. Yes, sir.

Q. For what time and in what way ?

A. I was his physician shortly after I became acquainted with him; whenever he was at Redwood he would call on me. I was his family physician there all the time, unless they were some place else. What time they were there I was called upon if there was any sickness.

Q. What degree of intimacy did you have in his family after he was married ?

A. Simply those of neighbor and physician.

Q. You had all the opportunities of knowing him and his family, as a family doctor, had you ?

A. Yes, sir.

Q. How late did your acquaintance with him continue ?

A. Up until a very short time before he died.

Q. Besides knowing him personally and socially, and in your professional capacity, did you ever have any opportunity of observing him in a business way, knowing about his business operations ?

A. Yes, sir.

Q. To what extent did that go ?

A. Well, I lived on his place there, when I first went to Redwood, for a few months on his farm.

Q. I did not catch your answer ?

A. I lived on his farm for a while.

Q. Which farm ?

A. Redwood farm, when I first went up there, though that was before he owned it. He only had a mortgage on it. It belonged then to William Cary Jones.

Q. He had a mortgage on it ?

A. Yes, sir; I went under lease from Mr. Jones.

Q. Doctor, during the time that you knew him did you observe any peculiarities in him?

A. Yes, sir.

Q. And if you did, I wish you would go on and state to the jury what they were?

A. Well, most of those peculiarities that I noticed, he was very likely on very trifling occasions to get into a terrible passion and rage; become perfectly furious without any apparent cause scarcely; the most trivial thing in the world.

Q. Now, can you instance to the jury—give them some instance of that peculiarity?

A. Well, yes. At one time, when the place was to be sold for taxes, before he had foreclosed the mortgage, he requested me to buy the property in when it was put up to the Sheriff's sale for taxes, and whatever I did, he would bind himself to live up to. And I did so, and he repudiated the whole thing, after writing me a letter, but without signing his name to it. He wrote a letter to me approving what I did, but his name was not signed to it, and he afterwards repudiated the whole thing, and got into a terrible rage, and said I had no right to act for him at all. That was one instance. There were so many that I cannot remember them all.

Q. Any other?

A. Another time, when he went to pay the bills when his mortgage was foreclosed, he became terribly enraged, because he said the Sheriff had charged him too much fees—fifty cents too much—and swore he would break him of his office, and one thing another of that kind, and became very much enraged at it. That is another instance. It was a very common occurrence with him to get into a passion about little things of that kind.

Q. At such times, what was his language with regard to its being profane, or not?

A. I think he was one of the most profane men that I ever heard speak.

Q. During his married life, did you observe any peculiarities in respect to his domestic relations?

A. I noticed frequently, when his wife would come in, he would treat her with a great deal of disrespect. His manner more than his language. He never used any bad language about his wife to me, or in my presence; but his manner evidently was very plain that he treated her with contempt, and he would cut her off very short when she would speak. He would very frequently contradict her when she would be making a statement in regard to family matters, in regard to their sickness, or something of that kind. His manner was very rude, frequently.

Q. Was there any other peculiarity that you noticed about him?

A. Well, he was peculiar in many respects. I do not know that—the fact is, almost every respect. He had a great idea of his self-importance—conceit; thought he knew more than anybody else on any topic that he pretended to say anything about.

Q. Did he ever talk with you at all, to yourself?

A. Yes, sir.

Q. Tell us what he said at such times?

A. I heard him make such remarks as these; that he was not living

for the present time, but that he would be better known in a thousand years. After generations would know of him when the great men of the present day would be entirely forgotten. A thousand years was about the period he used generally to fix, that he would be famous and well known. I have frequently heard him make such remarks as that.

Q. Did he ever talk with you about his domestic affairs?

A. No, sir; not much, very little, nothing that I can recall to my mind.

Q. Did you know what his qualities were in respect to truthfulness? Some of the witnesses here have been asked and counsel on the other side have asked whether he was not a mirror of truth and despised anything like falsehood or anything like that. Do you know what his habit was in respect to truth from your long and intimate acquaintance with him?

A. He was considered by those who knew him around the neighborhood in which he lived there—that his word was not good for anything unless it was written down; any contract or bargain he might make, unless it was written down, no one would consider it worth anything. Any promise he might make to any person nobody put any reliance in unless it was put in black and white and his name signed to it.

Q. State what your opinion was; did you at any time during your attendance upon him as a physician, from your acquaintance with him, form an idea as to his mental condition?

A. Very soon after I became acquainted with him I considered him—I considered him wrong in mind in many respects.

Q. What led you to that conclusion?

A. The condition that he manifested when he became angry at anything. That was one reason. I looked upon him as being partially insane for a long time, more particularly towards the latter part of my acquaintance with him.

Q. Do you mean generally insane, weak of mind, when you say partially you mean upon some one topic or set of topics?

A. Yes, sir.

Q. What were those?

A. Well, one I considered was his extreme views in regard to making and saving money. Anything that thwarted that idea he would become perfectly furious at, even if it were over small amounts.

Q. Was there any other subject?

A. The manner in which he treated his wife in my presence, while he treated every other lady pleasantly. I considered that he was wrong in mind on that subject.

Q. How did he treat her?

A. He treated her as I remarked before, harshly and with contempt. Contradicted her whenever she would say anything.

Q. Any other subject?

A. Well, on the subject of his fame hereafter, I used to think he was very wild and speculative.

*Cross-Examination by MR. PRATT*—Q. When did your intimate relations with Mr. Hawes and his family cease?

A. There never was any cessation of it, especially during the time of my residence there. I used to see them frequently as neighbors, and frequently as physician.

Q. That was from 1856 to 1868?

A. Yes, sir.

Q. During all of that time your relation to Mr. Hawes and his family were such as you have described, and continued up to 1868, when you went away from there?

A. Yes, sir.

Q. You formed the opinion that he was insane, or that he was wrong in his mind, very soon after you first knew him?

A. Yes, sir.

Q. What led you to that opinion then?

A. These peculiarities that I have mentioned of his passion and fury, without any provocation whatever—the particular thing.

Q. Doctor, is it not perfectly consistent with a sane mind, that a man of a bitter and vindictive disposition and temperament, should get very much excited, and be thrown into a passion when opposed or thwarted in anything?

A. Well, a person may get excited, and in a passion, it is true, without being considered wrong in mind, but when it is persistently followed up, increases upon him, and leads to such furious conduct as I have very frequently seen him manifest for the merest trifles, I consider that man has an unbalanced mind.

Q. If a man is of that violent temper and ungovernable passions, and indulges in these fits of passion, from time to time, does not make any effort to control himself, would not the natural effect of that be, that the passion would grow upon him as time elapsed, and he naturally grow more violent and more excitable, necessarily?

A. Yes, sir, when it is uncontrolled, and left without any check upon it whatever, it is very apt to be the case certainly.

Q. That is consistent with general sanity of mind, is it not—general soundness of intellect?

A. Well, I do not consider it so. I think it becomes a disease, a derangement of the intellect or the powers of the mind. Very frequently such cases occur, and always need watching and examining with care, as his case was one of that kind.

Q. Do you make any distinction between emotional insanity, emotional disturbances, and intellectual disturbances?

A. Of course there is a difference, but yet each of them might be a disease.

Q. Is not all you have said about Mr. Hawes getting in these terrible passions at what you call trivialities simply, a disturbance of the emotion and emotional disturbances or derangement, or may that not exist without any intellectual disturbances whatever?

A. A person may be insane on one subject, and their mind be very bright on another. I consider that in those cases he manifested a good deal of insanity, monomania.

Q. That is not an answer to the question. You say that he became furious, excited, thrown into a terrible passion upon mere matters of triviality?

A. Yes, sir.

Q. Might that not be the case and still there be no disturbance of the intellectual faculties, but only of the emotional?

A. Certainly.

Q. Did you ever know Mr. Hawes to manifest symptoms of what we call insanity, on any other subjects than those already described?

A. On the subject of taking medicine, I used to consider that he was peculiar, and I at first did not pay much attention to it. The first



time I ever prescribed for him I ordered him some blue-pill, and he would not take the blue-pill unless I would get the pot and take the medicine out, and he would see me take it out and weigh it out, for fear there would be poison in it.

Q. When was that?

A. That was probably in 1857—'56 or '57. Afterwards when I would prescribe for him he would not allow the druggist in Redwood City to put it up for fear he would get the wrong medicine, but he would bring it to Mr. Widber, here in San Francisco. He would not allow any one else to put up his prescriptions, at that time. I offered to get his medicine put up, and he would not permit it. He wanted to have it put up himself, by these druggists here.

Q. Now, Doctor, is not all that perfectly consistent with undisturbed intellectual faculties, coupled by an extreme degree of caution and care?

A. Carried to that extent, I should consider a man a little insane on that subject.

Q. You would consider a man who manifested that degree of care in having prescriptions prepared, insane on the subject of medicine?

A. So far as that act is concerned, yes, sir; by such actions I consider he manifested a degree of insanity.

Q. He was insane so far as that particular act was concerned?

A. Yes, sir.

Q. But at the same time there might be no disturbance of the intellectual faculties generally. His judgment might be unimpaired?

A. His mind might be very brilliant in other respects, certainly.

Q. Can you state another instance, or those instances from which you inferred that Mr. Hawes was insane on some other subject?

A. Well, I do not think of any just at the present time.

Q. Let me ask you this, Doctor, in regard to insanity; do you consider the existence of a deluded opinion, the most absurd, I don't care how absurd it is, the most absurd delusion in the world, standing alone, without knowing anything about the causes which have produced it, any evidence of insanity or unsoundness of mind?

A. Yes, sir.

Q. You would undertake to say then, if you were called to see a patient for the first time, and you found that person asserting that he was Jesus Christ, upon that fact alone, you would pronounce him a monomaniac?

A. If he seemed to be sincere in the idea I should.

Q. If he seemed to be sincere in the idea?

A. I should, certainly.

Q. You would pronounce him insane upon that subject?

A. Yes, sir.

Q. From the mere fact of his asserting that he was Jesus Christ, and believing it?

A. I should; yes, sir.

Q. Then I understand that you do not take into account at all in determining a man's sanity or insanity, the causes which have produced the deluded opinion?

A. It is very seldom that you can find out what the causes are. Very frequently you cannot ascertain the causes at all, because the man is not able himself to give an opinion by which you can gain any information. He makes the assertion without cause.

Q. Let me ask you, Doctor, to answer that question. Do you



take into account at all the causes which have led to this deluded opinion which a man entertains, for the purpose of determining his sanity or insanity.

A. Of course you take all the surroundings of the case you can get. The conclusion is evident that the man is insane on that subject at any rate, no matter what the cause is, if you ascertain that—

Q. But let me ask you again. Suppose that in this age of general information and historical light, you should find a man intelligent and educated, who should insist upon it that the Duke of Wellington was captured on the field of Waterloo, and that he died on the island of St. Helena, instead of Napoleon the Great, would you pronounce that evidence of insanity?

A. If he seemed to be sincere and persistent in it. I should think so; yes, sir. I should think he was insane on that subject. It would be a matter of delusion.

Q. Suppose instead of being a man of intelligence and discretion he was destitute of education, would you then attribute his conclusion in that respect to any other fact?

A. Of course in investigating the case, if he had had no means of knowing anything about history, and if he had been told this thing and had no means of ascertaining its truth, it would be a different thing altogether.

Q. Then you would not pronounce him insane merely because he entertained a deluded opinion unless you had the knowledge of the modes of causation of that opinion?

A. Certainly, of course—just as I have told you; if he had had no other means of information and had been told so and he had no way to know differently, I would think, of course, that he would not be insane; that he might be laboring under a delusion.

Q. Take the case of Joseph Smith, the celebrated Mormon prophet, assuming that he believed, as we all suppose that he did, in perfect sincerity, that he was the prophet of the Almighty, do you think that deluded opinion of his consistent with perfect sanity or soundness of mind?

A. I always considered that as a matter of speculation with him more than anything else.

Q. Then before you would pronounce him insane for entertaining such an opinion, you would ascertain the modes of causation of the opinion, should you?

A. I should try to ascertain whether he believed it himself. A man may make an assertion without really believing it himself.

Q. Exactly; but assume that he believed it in all sincerity?

A. I should think he was insane on that subject.

Q. You would not stop to make any inquiries at all as to what led him to that belief, but would pronounce him insane on that subject?

A. I should of course inquire into all the facts of the case before I should give an opinion, Mr. Pratt.

Q. Now, let me come back again to the first question, which you answered in the negative. Suppose that I assert I am Jesus Christ; you would pronounce me insane on that subject without making any inquiry as to what had led me to that conclusion?

A. I should try to find out what was the matter with you, of course.

Q. Then you would take into account, in determining my sanity or insanity, the grounds and reasons of my belief?

A. Always; in every case.

Q. Was there any other circumstance or occurrence than those you have now stated, which led you to believe that Mr. Hawes was partially insane?

A. Yes, sir.

Q. State another, Doctor.

A. Well, he was very frequently speaking of his Mont Eagle University, and the Chamber of Industry, and one thing and another of that kind.

Q. When did you first hear him speak of either of those institutions?

A. I think in 1858, if I remember right. I have heard him suggest those things long before that.

Q. Long before 1858?

A. Yes, sir.

Q. As far back as 1856?

A. No, sir.

Q. 1857?

A. Did I say 1858? I meant 1868; that is what I meant.

Q. Fix it as near as you can, Doctor, the first time you ever heard him allude to those institutions, or about his desire and disposition to establish any public institutions—benevolent, educational, or anything else. When did he first mention that subject to you?

A. I cannot remember when he first mentioned it. He used to be connected with it all the time, talking about such things as that to me. At least very frequently talked about such things; asked my advice and opinion about those things. He pointed out to me this Mont Eagle, where he was going to put his institution of learning that would be so great a thing.

Q. This occurred prior to 1868?

A. I believe so.

Q. As early as 1867?

A. I think so; maybe earlier than that.

Q. You recollect the time when he was last in the State Senate?

A. Yes, sir.

Q. With respect to that, was it before, or after, or during that time?

A. It was since that time.

Q. Prior to 1868?

A. Yes, sir.

Q. That is as near as you can fix the date?

A. Yes, sir; that is as near as I can fix the date.

Q. Now, let me ask you, Doctor, what there was in any of these acts, or any of these bursts of passion on the part of Mr. Hawes, which was not perfectly consistent with a well-balanced and sound mind at all times, except while the momentary passion lasted? Are the two things entirely consistent? May they exist, I mean to say?

A. There are times that men may manifest a great deal of passion and fury, and then regret it afterwards, and come to his calmer mind, and be perfectly sound again. Of course, there is no doubt about that.

Q. How long did these bursts of passion, so far as your observation extended, last with Mr. Hawes?

A. At any one period?

Q. Yes, sir.

A. They generally lasted until he had exhausted himself, and the English language, and whatever else was about—his audience and things generally. As a general thing, they left him, and would go away, and would let him scold it out.

Q. And when the burst of passion had in a manner exhausted him, he would subside and become in a manner calm and rational again?

A. It very frequently wound up with a headache, or something of that kind, he became so exhausted.

Q. But after that, he appeared like other men again?

A. Certainly, there are lucid intervals. As a general thing, he was a man of extraordinary sense.

Q. What is that, Doctor?

A. I considered him of extraordinary sense and ability as a general thing, aside from this.

Q. Was not he a man of fine judgment and discretion, except when laboring under these temporary passions?

A. Well, he always had his peculiarities different from most men on a great many subjects.

Q. But, aside from these peculiarities which you have detailed, and these bursts of passion, was not he a man generally of keen judgment, a man of sagacity?

A. On some subjects.

Q. Was not he on most all subjects?

A. He generally carried most all subjects and statements that he had anything to do with.

Q. He was a man of extreme vanity and egotism, was he not?

A. Yes, sir.

Q. So far as your observation extended, he never made any effort to control his passion?

A. No, sir.

Q. He was vindictive in his temperament, wasn't he?

A. Yes, sir.

Q. And generally, when anything thwarted any of his plans or agreement, or he made them any opposition, he gave away to these uncontrollable bursts of passion and excitement?

A. Yes, sir.

MR. BALDWIN—Q. I wish to ask the Doctor. You stated that he got very angry for trivial causes?

A. Yes, sir.

Q. Has your observation been that men get angry—that the violence of their anger is proportionate to the violence of the cause? Don't men get angry for trivial causes, as they do for great causes?

A. As far as this case is concerned he frequently got very angry and furious at such things, that scarcely any other person would notice at all.

Q. Is it not a characteristic, that men get more angry at trivial causes than they do at great causes? The less cause there is, the more angry they do get if they do get angry?

A. Well, I don't know; I don't see the point to your question; I don't understand what you mean; what is the idea, explain it again?

Q. Your reason was that he got angry at very trivial causes?

A. Yes, sir.

Q. Very angry at trivial causes?

A. Yes, sir.

Q. I ask if men are not as liable to get very angry at trifling causes as they do over great causes?

A. I don't consider a man of well balanced mind—

Q. That is not answering the question. You have already testified concerning your knowledge of the man. Have you, Doctor, seen men get exceedingly angry at trivial causes, and sometimes very cool under great provocation. As a general characteristic then, your observation is that the violence of the anger is generally proportionate to the magnitude of the cause of the anger?

A. I do not know that I have ever observed particularly about that; my general view would be that the greater the provocation, of course the greater the exhibition of anger should be.

Q. That is your idea?

A. Yes, sir.

G. A. SHURTLEFF called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. What is your occupation?

A. Physician and surgeon.

Q. How long have you been engaged in its practice?

A. Some twenty-five years; between twenty and twenty-five years.

Q. Have you devoted yourself to any particular branch of your profession?

A. I have.

Q. What is that.

A. To the care of the insane, more particularly than any other speciality.

Q. With what institutions, if any, providing for that class of unfortunates, have you been connected?

A. I have been connected with the Insane Asylum of the State of California for ten years; between six and seven years as its Superintendent. I was never connected with any other institution for the insane.

Q. What is your present connection with it?

A. I am the Superintendent of the Asylum—Medical Superintendent.

Q. What do you understand, Doctor, by the term "insane?" Is it a generic term that covers all classes of mental derangement, or is it a specific term referring only to a class of things?

A. It is a generic term. I understand the term "insane" to mean a person of unsound mind. I do not know that I could give a concise and comprehensive definition. There never has been one given which would cover every condition of mental unsoundness.

Q. What do you understand by the term, "a monomaniac?"

A. It is an insanity upon some one or more particular points or things; or, it is insanity expressing itself more prominently upon some points than upon others.

Q. Assuming that a man's mind is unsound upon one topic, or set of cognate and kindred topics, as, for instance, suppose a man to be insane upon the subject of a child or wife; is that delusion necessarily accompanied by general mental unsoundness on other topics?

A. It is not necessarily.

Q. May an entire mental delusion upon one subject exist in the mind of a person, in a man of unsound mind, with perfect soundness and discretion and judgment on other topics?

A. It may, apparently.

Q. How is it usually?

A. Such is frequently the case; but I don't mean to say that the mind would be entirely sound upon all other topics. Many topics might have such a connection with the subject of a man's delusion, as to affect his judgment upon those topics upon which he did not appear to be insane; because the delusion is an idea, an insane delusion, and holds the mind subordinate to it.

Q. You heard the case put here by Judge Pratt to the last witness, of the man who entertained a sincere belief that he was Jesus Christ. Now, might not a man entertain an opinion, a sincere opinion of that sort, so at variance with and opposed to and shocking to all our notions, and yet he, upon other subjects or topics, of comparatively sound mind—able, for instance, to transact the ordinary affairs of life, able to buy and sell, and to do business of a general nature not particularly connected with that idea?

A. Yes, sir.

Q. Would you then be governed by your judgment as to the mental condition of the man who labored under such a delusion as that he was the Savior of mankind—would you be governed by a consideration of that effect, or would your opinion as to his condition be changed, if it appeared in connection with his having this idea that he was able to transact the ordinary affairs of life? In other words, what effect upon your judgment as to the man's sanity or insanity would be produced by the added circumstance that he was able to transact the ordinary business of life?

A. Well, if I learned that he was able to transact the ordinary business of life, and appeared a sane man in doing so, I would consider his insanity but as existing on one subject only, or consider him a monomaniac, as the term is commonly used.

Q. Is it not often the case, and have you not found it to be often the case that where a man is afflicted with an insane delusion upon one subject, or set of cognate subjects, that that delusion is accompanied by other marked eccentricities?

A. It most generally is.

Q. In other words, where you find a man to be a monomaniac, actually deranged upon one subject or set of subjects, you find almost always something peculiar in his mode of thinking and acting on almost every subject, don't you?

A. I have very seldom found a man insane or manifestly insane upon one subject alone and possessing no eccentricities or peculiarities upon other subjects. At the same time, I don't say that that monomania would manifest itself in the ordinary business of life.

Q. To what extent do you find in your experience that self-exaltation and undue and inordinate pride of self is a characteristic of insanity?

A. What proportion of cases?

Q. Yes; you often find such cases among insane people. Is that one of the common forms of insanity?

A. Yes, sir; it is a common symptom in various forms of insanity. I should say that that was the case in twenty-five per cent. of the cases, at least.

Q. To what extent in forming a judgment as to the mental condition, the state of soundness or unsoundness of mind, does the fact of extreme and unreasonable irritability, extreme passion and violence of temper, caused by the most trivial or unimportant objects—how far

does that figure as an element in estimating whether a man is of unsound mind or not?

A. Well, it depends on the control that he exercises over that irritability. That of itself, I don't think enters into it.

Q. Suppose you had a case like this: A man who, whenever contradicted, no matter upon what subject, flying into a most violent passion, using the most profane language, and asserting that a man was his enemy because he contradicted him. Take, for instance, a case like this: A man is accosted by another and says to him, "Good morning, sir;" and the other replies, "Good morning; it is a fine day;" "No," says the man, "it is raining;" says the other, "No, sir; I don't think it is raining." Upon that he flies into a violent passion and denounces the man who differs from him on the subject of the weather as an infernal scoundrel, and a man who ought to be in the State prison; and that is the rule of his life—what would you say then.

MR. PRATT—I propose to object to that question. I am not certain whether, under the rule, counsel can state an hypothetical case at all or not.

MR. BARNES—I would recommend the counsel before he makes his objection, to inform himself upon the law.

MR. PRATT—There is a conflict of authority upon the question.

MR. BARNES—There is no conflict whatever.

MR. PRATT—He can state an hypothetical case, and take the opinion of the expert upon it, but it must be an hypothetical case which comes within the general range of the testimony which has been elicited on the trial. It is not competent for him to state a case which is not at all cognate to any matter before the jury, and ask the opinion of the expert upon it.

MR. BARNES—[After argument.] I will alter the question—Q. How far would that conduct influence you in determining the question of his soundness of mind, though upon ordinary matters, where uncontradicted, he transacted business as men usually do; in other words, how far is extreme irascibility and irritability an element of consideration in insane cases?

A. It is a very common symptom of insanity, and it would go somewhat to corroborate the insane condition of the person, where those more prominent symptoms presented themselves—I said that this unreasonable irascibility is a common symptom of insanity, and such conduct would be corroborative of the insanity if the individual also exhibited it, taken in connection with other more prominent and decided symptoms of insanity. I don't wish to interrupt you, but I should state further in regard to that irritability of temper, it would weigh vastly more if the person had changed in his disposition. If that irascibility had been a recent thing, and co-existent in time with other insane acts, it would have considerable weight; but if it was the natural habit of the man from childhood up, and at the period when he was unquestionably of sane mind, it would weigh much less, and scarcely weigh anything.

Q. To what extent in insane cases does the element of suspicion of others, the fear of assassination, fear of poisoning enter? To what extent is that an element in ordinary cases?

A. Well, I must speak from my recollection; it is a mere judgment. I should say at least fifteen per cent. of all the cases we have. I speak from judgment, not from actual statistics.



Q. Suppose a case like this, Doctor, given a man of good natural powers, developed by education and trained to one of the learned professions, who has made himself distinguished in public life by being the author of measures of admitted public usefulness; in private life, a careful, shrewd, and almost penurious man, who has a wife, who, through all the years of their connection, has been a faithful, constant, affectionate companion and helpmate, enjoying the respect and esteem of every person with whom she is brought in contact, of entirely blameless life in every respect; that after they have enjoyed a pleasant and agreeable married life for some years, there is developed in him a disposition, and he evinces frequently with increasing force a causeless suspicion and jealousy and hatred of her, manifesting itself by an extreme and continued rudeness toward herself at home and abroad, no matter who was present, or under whatever circumstances, manifesting itself by unfounded and unreasonable accusations against her chastity, declaring to many persons that she had been guilty of acts of the grossest licentiousness and immorality, that she was in the habit of visiting houses of assignation and keeping the lowest and basest company, accusing her with continued illicit intercourse with a clergyman whose character, like hers, was above every suspicion, and with whom at the same time the man himself was on intimate and friendly terms; accusing her again and again of illicit intercourse with a gentleman above all suspicion, and who was, at the very time when he made these accusations, his bosom friend; accusing her without foundation in fact of being a thief and a liar, of teaching her children and his to lie and to steal, of corrupting his children so that their future life was entirely impaired, and their possibility of future usefulness destroyed; accusing her to many persons he talked with of having a deliberate and willful purpose to take his life; of having three times administered poison to him for that purpose; expressing a constant dread that she would either assassinate him or take him out of the world by poison; refusing on that account to allow her to sleep in the house where he slept, to touch many thing that he was required to handle, and going to that extent that when she came into the room where he was, he has his medicines and his food and the articles about him that were susceptible of being tampered with, poured out of the window, burnt up or destroyed, on account of his apprehensions concerning her. Suppose that he, acting upon these delusions, believing them to be true, goes to the public authorities of the city where he has lived, and requires the services of policemen and detectives to ferret out the crimes of which his wife has been guilty, including her illicit commerce with those men and her conspiracies to take his life; that he, upon the recommendation of a public officer, employs one, two, three different detectives here, and when each one of those men, as well as all others with whom he converses, say to him that there is no foundation whatever for these statements, he turns upon them in a passion and rage, and says that they are in league with his wife for the purpose of accomplishing these same results. Suppose in addition to that, that frequently when his wife's name is mentioned to him he charges her with some or all of these crimes; he exhibits the utmost irascibility of temper and vindictiveness, his whole expression of face and manner changing from calmness to excitability and the utmost rage, using, with respect to her, indecent and vulgar language, which he was not in the habit of using under ordinary circumstances or in connection with other persons or other transactions of life. Suppose that by reason of his fear



of her he deprives himself of necessary food in his own house and almost starves himself and declares himself to be in a starving condition, though a man of large wealth and able to surround himself with the comforts of life for his declining years and last sickness; deprives himself of most of the comforts of home because he is afraid of her poisoning him or putting him out of the way; solicits the bounty and the charity of the neighbors among whom he lives, and they in a measure for this reason supply him with food and subsistence. Add to that, that during this long-continued sickness he is often found wanting in ordinary modesty and decency, that he is regardless of the decencies of his person or decencies of language, and has to be frequently reminded and controlled in both these respects. Add to this an habitual, insufferable, indecent, improper manner and demeanor towards his wife whenever she presents herself to him. Add to this the delusion, absolute and without the slightest foundation of any sort or description, a delusion on his part that his wife is the mother of her reputed niece, and repeatedly asserting that, and when pressed for a reason, arguing at length and with considerable shrewdness that she must be the mother of her niece because she displays so much affection for her, and rests satisfied that his wife is the mother of her niece simply because she shows affection for her. Add to this that in accusing his wife of these associations with gentlemen who are above all suspicion, he accuses one of them of being the father of his only daughter, a daughter toward whom he exhibited under ordinary circumstances extreme affection, of whom he is particularly fond and particularly proud, but also when speaking of her in connection with his wife accusing a gentleman who was above suspicion and one of his bosom friends for long years of being the father of that child; that this hatred and abhorrence of his wife continued without cause, increasing in intensity until he cannot bear to see her, he cannot bear to speak to her, he won't allow her to sleep in the house where he sleeps, nor to do anything for him except the most menial and degrading services, and whenever pressed for a reason for his hatred of her, whenever his reason fails to convince the person with whom he talks, in many instances he turns upon him or her, as the case may be, and declares that he or she, as the case may be, is in league with his wife, and, being her friend, must be his enemy, and refusing to hold any more intercourse with them. That this state of facts which I have mentioned continues for a series of years, accompanied with eccentric and mean conduct in very many other respects; but take that simple proposition with respect to this woman, what should you say was the character and condition of that man's mind with reference to his wife and his children, and to what class or grade of insanity or insane patients, if insane, would you assign him?

MR. PRATT—I interpose an objection to that, on the ground, first, that the question is too general, and it presents no definite point, upon which any intelligible answer can be given, and in the next place the question assumes the existence in fact, and beyond all controversy of a series of twenty or thirty different facts, every one of which is controverted in this case, and on which the jury will yet be obliged to pass, while it omits some other very material facts involved in this case, and particularly, the fact that the individual in question, at the time of all these acts, enumerated in the question, was dying of chronic consumption, in a state of extreme nervousness and irritability. I believe that

is the entire objection, all that I care to state. On those grounds, we object.

MR. BARNES—I will add this. Add to this, that during the greater portion of the time when he was conducting himself as I have mentioned, he was in a condition of impaired physical health, extremely nervous and irritable, suffering from tubercular disease of the lungs, which constantly progressed, and of which disease, he finally died. Assuming the facts stated in the question to be established by the evidence, and that they should be found true by the jury, what would be your opinion upon the facts thus found true, on the question of his soundness of mind, and to what class or species of insanity, would you assign his case, if any?

MR. PRATT—The first objection I stated, was that the question was too general, and presented no definite or tangible point, upon which a witness could give a definite answer. The second is that it states a large number of assumed facts, every one of which is controverted in this case, and that remains to be passed upon by the jury, and the third objection will read that it assumes the existence of certain facts, as to which there is no testimony whatever before the jury at this time.

THE COURT—[After argument.] So far as the first objection is concerned, that is, the first objection that presents itself to my mind, in the chronological order in which they are put, I will overrule. Doctor Shurtleff is an expert, and states in the commencement of his testimony, that he cannot define insanity, or give any better definition of it than illustrations. He may be able, in the way of illustration, to give cases that are not directly before the Court, in his testimony—by way of applying the principles of his profession to a case in Court. Then the facts must be confined exactly to the case made in Court. Now, as to this question being too general, it involves some eight or ten days of the latter part of the life of a distinguished man, and in the very nature of the case, has to be very general. I will, therefore, overrule the objection to it on that account. That it involves facts, the truth of which is yet to be passed upon by the jury, is an objection which I will also overrule, because the question is based upon the hypothesis that those facts are established. If the jury believe these facts have no existence, then the opinion founded upon those facts is no opinion at all, and has no weight with the jury. As to whether or not it embraces facts, which have been developed by the testimony, that can only be determined by reading the question over again, very carefully, or I suppose the burden of showing that fact would develop upon you. You mention one of those facts is inconsistent with the testimony, the question assuming that in every case, he refused food from his wife. The question will have to be read over again, carefully.

MR. BARNES—[After argument, the question having been read.]—Assuming the facts stated in this question to be true and established by evidence, what would be your opinion upon these facts, on the question of his soundness of mind; and if insane, to what species of insanity would you assign his case?

MR. PRATT—Our first objection still stands. We object on the ground that the question is too general, and that it presents too many conditions.

THE COURT—I have passed on that, and overruled it, and also on the other grounds.

MR. PRATT—The Reporter will note that I except to the ruling of the Court.

MR. KENNEDAY—I join in the exception.

THE COURT—All the parties in favor of the will take the same objection and exception, as I understand it.

MR. PRATT—Those who support the will, except to the ruling of the Court.

MR. BARNES—Go on, Doctor.

THE WITNESS—In regard to the mental condition of the person, I should say that that person named in the statement there, was of unsound mind; that he was laboring under delusions, and an insane man. I construe the language of that statement in describing his conduct and his acts to describe them as habitual acts, not exceptional acts.

MR. BARNES—Yes, sir.

A. I think the language would bear that construction. In regard to the kind of insanity, it would be termed monomania. It is a particular kind of monomania, however; it is what is sometimes called a monomania of suspicion. Authors recently have made a new class—or there are a great many cases of insanity, and upon that, authors disagree, and I only name the class so as to describe what I conceive to be the condition of this man to the jury; but I attach no importance to those names given to classify insanity, because some give four classes, and some twenty or thirty. But more recently there has been a class or sub-class termed phthisical mania, or the mania of tuberculosis. The symptoms are peculiar, and resemble in almost every respect those described in this hypothetical case. And taking into view the statement in regard to his physical condition, I should say that his mania or monomania belonged to that sub-class of insanity. I do not apprehend it is necessary to say anything further to illustrate the case.

MR. BARNES—If there is anything that you have to say of it I should be very glad to have it?

A. There would be nothing unless it would be to point out some symptoms.

Q. That is what I wish you to do, sir, if you will. I generally leave that branch of the case to my associate, Judge Pratt, but if you will go on now in a general examination and state it I will be obliged to you?

A. Well, I would simply say that in this particular form of insanity it is very common for patients to be exceedingly suspicious, to suspect their food of being poisoned. It arises from their suspicious character. It is almost invariably the case that they are exceedingly irritable or else very much depressed, melancholy, so as to become taciturn; but they are very commonly very irritable. They contract a very great intolerance of those persons who have much to do with them particularly.

Q. Anything further, Doctor?

A. No, sir.

Q. Setting aside absolute dementia or absolute loss of mind and intellect what is the true test of insanity, in your opinion?

A. Well, we would have to take all the conduct of a person into consideration. Of course if there is a delusion it would be a very strong evidence. If it was proven that he entertained irrational views, delusions which could not be removed by facts, it would be conclusive to a sane man; that of itself would establish the fact of the insanity of that person.

Q. Now if a man persistently believes supposed facts which have no real existence except in his own perverted imagination, and against all evidence and all probability, and conducts himself logically enough upon the assumption that such facts exist, what is his condition so far as they are concerned?

A. Well, if a man is of insane mind and laboring under insane delusions—any person may have delusions—but I mean insane delusions, beliefs which cannot be removed by evidence.

Q. Now, may not a man be essentially mad or insane on such subjects concerning which he is so unreasonably deluded contrary to evidence and fact, be yet so essentially mad or insane upon those subjects, while on other subjects he may reason, and act, and speak like a rational being?

A. Yes, sir; he may be.

Q. If you found a man under mental delusion, believing in facts which had no existence, except in his own morbid imagination, and believing them against all evidence and all probability, and acting logically upon those false premises, would your opinion with reference to his being, as you say, in a state of mental delusion, be affected, though he were able upon other subjects to act and reason and speak rationally?

A. No, it would not.

Q. Then, in such a case, the fact of his being rational in his reasoning, and his actions, and his speech would not come in at all in determining whether he was sane or insane?

A. No, if he was—it would not be an essential point in proving that he was not insane, that his mind was clear upon some points. A monomaniac necessarily is clear upon some points; he is only insane on one, or two, or three, or a few subjects.

*Cross-Examination by MR. PRATT*—Q. Doctor, when you use the word insane, simply, do you mean to include all of the various classes and degrees of insanity from the effects of unsoundness of mind in the general term, insane?

A. Yes, sir; it is a generic term, which applies to all cases.

Q. You spoke of monomania, in your direct testimony, as being insanity upon some particular subject?

A. I did.

Q. Is there also a monomania as to a particular person or set of persons; does that ever exist?

A. I don't know as I understand the import of the question.

Q. You say that monomania is insanity upon one or more subjects?

A. Yes, sir.

Q. Is there such a thing as monomania upon one or more persons?

A. Yes, sir. With reference to some particular person?

Q. Yes, sir.

A. There is.

Q. You stated at first in your direct examination—you used the expression that an insane delusion holds the mind subject to it. Do you mean to say by that that one particular, one singular delusion, as in the case of monomania, affects or impairs all the faculties of the mind, the entire intellect?

A. No, I don't mean to say that it impairs the faculties of the mind upon all subjects, but it does upon the subjects upon which the person is a monomaniac.

Q. It is on that subject alone you meant to say it held the mind in subjection?

A. I may have said that it might go beyond that, inasmuch as other subjects would have such relation to that particular one as to affect the person's judgment.

Q. What classification of insanity or insane persons do you adopt—how do you classify them?

A. I generally take the classification of Esquirol into mania, monomania, melancholia, dementia and idiocy. That is the simplest of all classifications, except the classification of Pinal, which had still one class less. But I do not know that I am aware of any two authors who wrote upon the subject, that adopt exactly the same classification.

Q. Do you recognize a classification with reference to other conditions, as into emotional, intellectual and ideal insanity?

A. Yes, sir; I know that classification is used by some authors; but I recognize their meaning by a—

Q. [Interrupting.] That does not necessarily conflict at all with your classification in a different process?

A. No, sir.

Q. What is the distinction between emotional and intellectual insanity?

A. Well, emotional insanity affects or influences—it is a disorder of the affective faculties or emotions; intellectual of the intellect of course.

Q. And it is evidenced by what?

A. Which? Emotional?

Q. Yes, sir.

A. The emotional is evidenced by—well, it is evidenced by a great irregularity and intensity of the feelings, the emotions.

Q. Exactly. May there not be true emotional insanity to the fullest extent, almost so as to manifest itself in the more unreasonable paroxysms of rage and passion, one kind and another, and still be no degree of intellectual insanity—the intellectual faculties still be in full vigor?

A. I understand you. Well, I think that there may be an emotional insanity, and the intellectual—the strength of intellect be unimpaired, and the quickness of perception and reasoning faculties, on all subjects that are not influenced by the subjects, upon which the person is insane, so that the person apparently would be sane intellectually, and insane affectively.

Q. Suppose that the patient never manifested any peculiar symptoms except of the emotions; that in all matters of business, complicated, extensive, taking care of a large estate, looking after numerous tenants, organizing and endowing public institutions, with half a dozen different courses of study and training and education, and in all of his intercourse with the world carrying on extensive business, he seems to reason correctly in all those matters, and the only symptom of disturbance is a paroxysm of rage when certain matters are brought to his attention; would not you say in a case of that kind that his insanity, if insanity at all, was simply and purely of the emotions?

A. Yes, I would regard it as such—or simple—I do not mean to say that I would regard him insane without any other evidence than the quickness and violence of his passion at all.

Q. You would not regard him insane from that circumstance alone?



A. I do not think I would regard him insane from that circumstance alone, unless there had been a great change in his habits.

Q. Suppose, Doctor, that these paroxysms of rage were so frequent and habitual as to become in a measure almost continual or occurring at least very frequently, you would then regard it perhaps as a species of monomania, would you not, but still of the emotional qualities only?

A. Well, I—if insanity at all I would regard it as of the emotional, not of the intellectual.

Q. But you would not regard it insanity, standing alone, if there was nothing more than that frequent almost continual paroxysms of rage in regard to certain matters? The patient from time to time—if the paroxysms lasted a few moments and ceased itself—and the patient became perfectly tranquil and calm and rational on every subject?

A. I could not very well answer that question just upon that simple statement. I would want to know more about the person's habits during life, and his temper and temperament, etc., to enable me to give a correct or intelligent answer.

Q. Can there be, Doctor, any correct and reliable diagnosis of insanity without a knowledge of the accompaniments of what may be called the deluded idea or opinion, and the antecedents and physical condition of the patient?

A. It is important to know all of those facts, and absolutely necessary sometimes. But there are some conditions of insane persons where the violence of the insanity is such, the symptoms are such, as to be manifested to all, without taking into consideration the surrounding circumstances, and the history.

Q. Or any knowledge of the patient, except the mere fact of the symptoms, which you perceive or observe?

A. There are some cases where the symptoms are, or would be sufficient to establish the fact.

Q. In order that I may get your idea of the distinction between the class of cases to which you refer, and ours, give us an illustration, if you can, to the jury.

A. Well, I mean, for instance, a raving maniac; I suppose that the jury will understand what I mean by that; a man that is raving mad, talking incoherently, and having an insane expression; derangement of the clothing, and all the usual symptoms of a raving maniac. The symptoms themselves, would be sufficient, in my opinion, to establish, or to make it evident that the man was crazy or insane, without taking all the circumstances, and the history of a person, which are sometimes necessary to determine the fact.

Q. Isn't it exceedingly difficult sometimes, Doctor, when you have the patient before you, the full history of his antecedents, and all the accompaniments of what seems to be the deluded idea; is not it still very difficult to determine, sometimes, whether he really is insane or not?

A. It is extremely difficult.

Q. It is very hard, sometimes, to draw the dividing line between mere eccentricity, or assumed insanity—if I may use the expression—and insanity itself; the two overlap one another, do they not?

A. Sometimes they seem to stand upon the border between sanity and insanity. It is almost impossible, frequently, to tell which side to place the person upon.

Q. Suppose the deluded opinion in a given case—what we assumed to be a deluded opinion—depends upon evidence—that is the fact; that is embedded in a deluded opinion, depends upon the evidence; if there was no evidence whatever, on which to base the delusion, would you pronounce the patient, necessarily, a monomaniac?

A. If there was evidence to establish as true the particular idea that others might call a delusion, I would not consider it as settled that it was a delusion in the individual at all, but that he had formed his opinion from evidence.

Q. Suppose the evidence in regard to the existence of that fact is conflicting, and assume that a large preponderance of the evidence is against the existence of the fact; but notwithstanding the preponderance being against it, there is still some evidence tending to support it; the patient rejects the preponderance of testimony and believes the lesser weight of testimony, and insists upon it against the preponderance of evidence that the fact exists, would that necessarily involve any disturbance at all of any of the intellectual faculties?

A. It might and might not. It would depend a great deal upon the intelligence of the witness, and the degree of preponderance, or the weight of evidence against it.

Q. Some men are a great deal more credulous of a fact than others, are they not?

A. They are.

Q. And some men would be ready to believe against the preponderance of evidence that a fact did still exist and still not be at all insane?

A. Well, I could not answer very correctly to that, unless I knew the case so that I could form an opinion in my own mind whether a person exercised a degree of reason in weighing the testimony.

MR. BARNES—Q. Suppose a man is near-sighted, Doctor, just a little near-sighted, and he persists in thinking he is stone blind, and won't take a step without assistance. That is what Judge Pratt means?

MR. PRATT—What then, Mr. Barnes?

MR. BARNES—I am simply giving you an illustration; now go on and ask him what is the matter with that man? There is a man who believes he is stone blind, notwithstanding there is a preponderance of evidence that he can see, and he won't walk without help?

THE WITNESS—I suppose I am not to answer that question?

MR. PRATT—Q. Suppose, Doctor, the fact is in itself a rational one, and depends merely upon the weight of the testimony as to its existence, would you say necessarily that the man who believed differently from what you did upon the testimony, was insane, or deluded?

A. Well, I—it is not absolutely necessarily so, but I could not give a very intelligent answer to it unless I can get the amount of the testimony or the reasonableness of the testimony that the person had for believing, and also the amount of evidence against his belief; and then, moreover, the character of the man has a great deal to do with it. A man of stupid mind, governed by his prejudices, and unaccustomed to compare facts, and drawing deductions therefrom, might believe a thing upon very slight testimony when there is considerable preponderance the other way; when a differently constituted man perhaps with the same temperament and the same force of passions would come to a different conclusion from his superior ability to weigh testimony. All



those things must go into consideration in answering a question such as you propound, it seems to me.

Q. Then, whether he was insane or not, in adopting the delusive idea, would depend upon the weight of testimony in support of it?

A. Yes, sir; it would, in adopting a delusive idea?

Q. Yes, sir.

A. Yes, that is a matter which should be taken into consideration. It would go to establish the possibility, the probability that it might not be an insane delusion which could not possibly be removed by greater testimony.

Q. You stated in your direct examination, Doctor, that in twenty-five per cent. of the cases of established insanity there was an undue self-exaltation, a high opinion of the individual's own self?

A. I did state that, but I didn't state it from statistics. I state it as an impression, an extemporaneous impression formed here, during my giving of the testimony.

Q. Is it a fact that an undue exaltation or high opinion of one's self, in the absence of other leading symptoms of insanity, enters at all into your estimate in determining the status of the person's mind?

A. It might and might not. It would depend upon the reasonableness of his exaltation.

Q. Take a man who is conceded to be a man of a very high order of intellect—a man who has been very successful in life, occupied many public positions, a man of thorough education and high attainments, a man who has been flattered a great deal, and honored by the public; would you consider the fact of his entertaining a very high opinion of himself, as having any weight at all in determining the question of his sanity or insanity?

A. Well, I don't think it would have much, if any weight, unless it was shown that his estimation of himself had changed—that from a comparatively modest man, entertaining a reasonable estimate of himself, he had become very extravagant, and had manifestly changed in his conduct in that respect, then it would have some influence; but if he had always been an exceedingly vain man, and there had been no very marked change in that respect, I would say it would have no weight at all, standing alone.

Q. If he was naturally vain and egotistical, and that had grown upon him gradually, making a change in the course of years, but no sudden or worked change at any particular period, the result would be the same, would it not?

A. It might have grown upon him with his success in life, and his additional acquirements; but as I said before, there might be a very great unreasonableness of exaltation of mind which would weigh considerably; if a feeble man should say he was stronger than Sampson or that he could lift half a ton, as some insane men do, that is simply an exaltation of their own powers, and yet such an extravagant exaltation is an evidence of unsoundness of mind.

Q. Now, let me ask you, Doctor—You say, twenty-five per cent. of the insane are afflicted that way. About what proportion of men generally, from your own observation, have rather an exalted idea of their own importance and capacities?

A. Well, it is impossible for me to answer a question of that kind, because the gradations are as numerous as individuals. Every man has his own individuality, and I cannot make any such. I cannot form

any such estimate with any correctness, about the number of men that have a high estimate of themselves.

Q. Must you not necessarily, Doctor, in that respect alone, judge the sane who come in contact with you in the same manner that you do the insane? That is, simply from your observations, and your judgment, and standpoint of what their real qualities are?

A. I don't think, myself, the comparison is a good one, because an unreserved expression of insanity is generally so marked that a person can form some opinion at once of each particular case, particularly where there is any exaltation; that exaltation of which we are speaking. But in the sane, the person who is less expressive of his high estimation of himself, may nevertheless be the vainest of men, but he has the prudence and discretion to reserve and keep it to himself; and we cannot judge of the sane man by his conduct, as we can of the imprudent and unreserved conduct of an insane man.

Q. It is a matter of fact that a much larger portion of the sane may be afflicted in that way than the insane, only it may not be observed?

A. For all I know to the contrary. I don't pretend to say.

Q. You spoke of irritability and extreme nervousness, etc., as being one of the elements in your estimate as to the sanity or insanity of a given individual. Is that speaking with some qualification? Suppose a person was naturally, and when in health, so organized and constituted as to be nervous and irritable, and, as he became diseased, this irritability and nervousness, of course, grew and increased upon him; would it then constitute—would it have any weight at all in your judgment in determining a man's sanity?

A. Well, it might have some weight. If a man flies into a passion, and becomes an insane man, may fly into a passion and become enraged without any reasonable cause at all; but a sane person would have some cause of his outbursts of anger.

[Here the Court adjourns until to-morrow morning, ten o'clock.]

## NINTH DAY.

THURSDAY, NOVEMBER 23d, 1871.

*Cross-Examination*, by MR. PRATT—Q. You had stated that in some cases insanity was so marked, that a knowledge concerning the circumstances of the cause of delusion, or the antecedents of the patient are necessary?

A. I did, sir.

Q. But that in most cases, a knowledge of all the circumstances was necessary to a correct diagnosis of the disease?

A. In many cases.

Q. As an illustration, you instanced the case of a man believing himself strong enough to carry off a ton. That is a case, Doctor, where the fact is capable of demonstration. The patient may make repeated efforts and fail, but if he still persisted in trying it, until he could accomplish it, would you still pronounce him a monomaniac?

A. Yes, sir. The difference that I wished to make, was, that the

idea was so unreasonable, that I would regard him of an unsound mind on this account.

Q. In order that the true test and distinction between these two classes of cases, and that where the opinion or belief is irrational in itself, as that a man should believe himself his own father, a thing that is impossible, or that he could lift this building, a thing that is capable of actual demonstration, and in itself irrational and absurd. In those cases you would say without further inquiry, that the patient was insane, but if the erroneous opinion was not a conclusion, irrational in itself, and dependent on a variety of facts, a simply unreasonable action, and against the weight of evidence, then you would be obliged to know all of the accompaniments, circumstances and antecedents, to determine positively the existence or non-existence of insanity?

A. I would have to know whether his belief was founded in the fact; whether he ever had any evidence of his belief—whether he had evidence for his belief.

Q. You mean what you would call sufficient evidence for his belief?

A. I do; sufficient evidence.

Q. Well, suppose then, that there is a tolerable degree of evidence, but in your judgment, the preponderance of evidence was the other way, would you still, from that fact alone, pronounce him a monomaniac?

A. Well, sir, I should be governed very much by the manner in which he received the evidence against his illusion. An insane illusion is the result of a disease. It is a delusion that usurps the throne of reason. To explain myself, we are all subject to delusions, but in a sound mind, reason and truth sit in judgment over those temporary delusions, which modify and correct them; but in a diseased mind, the delusion itself usurps the throne of reason, and controls the individual, and he refuses to listen to the testimony that militates against his peculiar belief or delusion; that is what I mean; that is the distinction I would draw.

Q. Exactly. Now, suppose the patient does listen to the testimony of reason, and weighs it, but still refuses to be convinced by what would convince you, would you make him conform his standard of the weight of facts to yours, and say he was insane because the amount of testimony which satisfies you did not satisfy him, if he receives and weighs the testimony apparently rationally?

A. If he received and weighed the testimony rationally, and candidly, and unexcitedly, I would not then consider that a sufficient evidence to pronounce him insane, but would regard it rather as an ordinary difference of opinion.

Q. Then, a mere error of opinion and belief which is dependent on facts and reasonings without very marked and leading symptoms of insanity, would not be sufficient to pronounce a man insane upon that alone?

A. No, not in regard to facts that might be probable, or possible, even.

Q. Take the case, Doctor, even of the Mormonite. The Mormons, who sincerely believe in the divine inspiration of Brigham Young, and all the absurd doctrines and notions of the Mormons. They are very absurd and irrational to you, are they not?

A. Well, they are.

Q. Would you for that reason pronounce all the Mormons insane?

A. That is so much a matter of faith that I do not think it illo-

trates the case. It depends very much upon the faith of the individual, rather than upon any positive proof.

Q. It depends then upon what might be termed their preconceived opinions of themselves?

A. Well, it depends on their—perhaps—

Q. Allow me to ask you this: Is not it a conclusion in your judgment without any evidence whatever to sustain it, and don't you so regard it from that standpoint, without any tangible or physical evidence?

A. Well, I believe—I am not very conversant with the evidence that they have, but my impression is that they pretend to have some revelation upon which they base their religious faith.

Q. Well, don't you regard that idea that they have of that revelation as absurd and ridiculous in itself?

A. It is absurd to my mind. I don't believe in anything of the kind.

Q. Well, is not the whole theory in your mind as absurd and ridiculous as can be, almost?

A. Well, it is not so absurd and ridiculous as some—as the delusions of the insane generally are.

Q. It is not absurd and ridiculous in your judgment?

A. It is, in my judgment.

Q. Yet you would not pronounce those people insane?

A. I should not.

Q. Would you consider the fact of their entertaining the opinions and belief any evidence of a disordered intellect—or a diseased intellect, I mean? Of course it is evidence of reasoning from false premises, and that sort of thing; assuming a fact that don't exist; but would it be evidence of diseased intellectual faculties?

A. I don't regard their doctrine as any evidence of any disease of mind on the part of those who entertain them.

Q. Suppose you were called to see a young man of ordinary natural capacity or intellect, or only moderately educated. Suppose you find he sincerely believed and rested in the belief that he had an angel in his stomach, would you on that fact alone pronounce him insane?

A. Well, I should say he was of unsound mind—insane.

Q. Then suppose you should learn afterwards that the young man from infancy had had some physical disorder of the stomach, and that he had been taught from his earliest childhood, day after day, by his parents and by all whom he came in contact with, that he had an angel in his stomach, would you then consider the belief on his part evidence of disordered intellectual faculties?

A. I would if he was a man of general reading and common intelligence.

Q. But suppose he is not an educated man, but has been taught that day by day from his most intimate acquaintance and all with whom he comes in contact?

A. It would depend upon the degree of seclusion from the world that he had been kept in. But I would have a very strong suspicion that such a man was insane, if he had had ordinary intelligence and had arrived at the age of maturity and had moved in society and had read even the common ephemeral literature of the day, such as newspapers, and had been educated in our common schools.

Q. Then you think it would be impossible to educate a sound mind, that is, a mind not diseased, to that belief? Where there was

an ordinary degree of intelligence in the person, even if it was commenced from earliest infancy and continued day by day, by parents and everybody with whom he came in contact?

A. I could not conceive any such thing as a man educated to that by every one with whom he came in contact. He would have to be kept in solitude and from all the rest of the world. I understood you to say also, to presuppose some physical disorder of the stomach?

Q. Yes, sir?

A. That itself would be the strongest evidence that his mind was impaired by that physical condition. That condition is one of the commonest causes of insanity.

Q. Then do I understand you to say that in all cases of physical disease, insanity may be inferred from that?

A. Not from that alone; but where the false belief exists and there is an admitted disease of the stomach, it would be more rational to attribute that false belief to physical disease of the stomach. All insanity is dependent on some physical disease, as the mind is dependent on matter for its manifestation.

Q. Then it is exceedingly important for determining the sanity or insanity of a person, to have a thorough knowledge of his physical condition, is it not?

A. Yes, sir.

Q. Doctor, take a case by way of illustration, cited by Bucknill and Tewke, in their work on insanity; here is a "person who avowed himself to be the incarnate Son of God. In one instance we find that an individual has for years before the fall, studied and interpreted the Scriptures in a mystical manner, and although a clergyman, his judgment relating to matters of theology has been of the most weak and arrant kind; that in consequence of his want of common sense and judgment, and the increase of his personal vanity, he has lost all chance of preferment in the regular course of his profession. As the world rejects him he redoubles his mysticism, vanity, and spiritual professions, persuades some washy-minded people to believe in him, and to confer upon him the adulation that he demands as the impersonation of God upon earth."

A. I would regard him as what we would call a simple-minded person; a weak-minded person, perhaps an imbecile, or weak-minded person certainly.

Q. That then would be one of those cases where the intellectual faculties were of a low order and might still be in a normal condition, not diseased?

A. Yes, sir; in my statement a moment ago, that insanity was the result of physical disease, I didn't intend including idiocy or any weakness; congenital weakness of mind. Of course, mental defect is not a result always of disease; after birth at least.

Q. Well, there may then, Doctor, be many cases of deluded opinion which is erroneous and impossible in itself, and yet a person entertaining that opinion may have his intellectual faculties in their normal condition, only weak, and of a low order?

A. Yes sir, of course foolish persons may entertain very absurd and foolish ideas. But it would not be any evidence of a diseased intellect. It would be an evidence of defective mind rather.

Q. Now, Doctor, if such extreme and impossible delusions as those may exist without impaired mental faculties, is it not much more dangerous to pronounce patients insane where the deluded opinion is



not impossible or erroneous in itself, but simply an erroneous and unreasonable conclusion, drawn from the evidence of many facts and circumstances.

A. There is a great difference between that case and the case of a man of ordinary intellect and intelligence who has during his life changed from ordinary sensible thoughts to the entertainment of absurd delusions. I could not characterize all of the follies of a weak, foolish mind as delusion, although the same ideas, if expressed by a profound philosopher might be regarded as delusions. What would be regarded in one as evidence of impairment of mind would be no evidence at all in another.

Q. Then whether the deluded opinion evinces disordered mental faculties depends in a very great measure upon the natural endowments and temperament of the man?

A. It does.

Q. Suppose then, Doctor, that the deluded opinions, so far as they are concerned—the unreasonable and absurd acts of the party were characteristic of the man through life, would they then have much weight as evidence of impaired mental faculties?

A. Well, they would have some weight, because they would be evidence of a poorly balanced mind; one which, under any exciting cause, would be very likely to become manifestly unsound and insane.

Q. You seemed to attach considerable stress to some change in the patient's modes of thought, or habits of life. Suppose that these changes had been gradual, steady, through a long series of years; in other words, that the weak points, what you would call the weakest points in his character, were developed greatly, and the strong points, from not being exercised, became no stronger, would such a change—that gradual change and development—cut any particular figure in a diagnosis of the case? Must it not be a sudden change, or a marked change; that is, a change transpiring within a period, at least of a few weeks, or months, in order to give it any particular significance?

A. Well, I do not think that the change need to be so sudden as that. It is very common of persons of very extraordinary eccentricities, to increase in those peculiarities, until the community, after any very great outbreak, find the person manifesting symptoms of unquestionable unsoundness of mind. Such cases are not uncommon; and then, they sometimes too—the outbreak of insanity sometimes is much more sudden in those particular cases, that I am referring to where there are extraordinary peculiarities, eccentricities of mind.

Q. Is that usually the case? Is not there usually some period in the course of these developments, before it becomes insanity, where there is a marked and material change?

A. Well, there very frequently is; I cannot say that there always is.

Q. You make and recognize the distinction, do you not, Doctor, of non-activity of the mind, and merely illogical action, or reasoning from false premises?

A. Yes, sir; I recognize such a distinction. By non-action, I suppose you mean dementia or impairment of mind; a passive state of mind.

Q. Not necessarily to that extent, perhaps. For instance, a person may be thrown into such a towering passion and rage for a few moments, or an hour, or longer, even, that there is no exercise of the will during that period of passion; I would call that a non-action of the mind. That is what I mean; that is what I refer to more particu-



larly. I would include that, also. Now, Doctor, may not an erroneous opinion, which would seem to you and to me, very absurd and ridiculous, be the direct offspring of the action of the mind, or only the result of illogical reasoning, or of giving undue weight to certain facts, and not sufficient weight to others.

A. Will you repeat the question?

Q. May not an erroneous opinion, which seems to you and to me, very absurd and ridiculous, still be the result of the action of the mind, only the action is governed by illogical reasoning, and by giving undue prominence to certain facts, and suppressing others?

A. Yes, sir.

Q. Is it not true, Doctor, that a great many men, whose mental faculties are not at all impaired, are still what you and I call unreasonably jealous of their wives?

A. Yes, sir.

Q. May not a man whose faculties of mind are in their normal condition, but simply of a low order, be extremely jealous and suspicious of his wife, on grounds which you and I, having more confidence in humanity generally, would regard as no cause at all for jealousy or suspicion?

A. Yes, sir; I should think that might be the case. I do not think it is usual, however, in cases of jealousy of that kind, in a rational mind, for it to be fixed and continual; they have paroxysms of jealousy.

Q. Suppose the jury in this case, Doctor, should return a verdict which, in your opinion, was contrary to all evidence; a verdict so much against the evidence, and so apparently absurd, that the Judge, upon his own motion, shall set it aside; that every one who heard the testimony should pronounce it absurd and ridiculous; would the fact of their returning such a verdict be any evidence to your mind of disordered mental faculties in the jurors?

A. No, it would not; I would think that there were probably some other influences.

Q. You would not attempt to diagnose their cases without knowing all of the other facts and circumstances?

A. No, sir.

Q. Doctor, if a man who had suffered for a series of years from chronic dyspepsia and consumption, became extremely feeble and emaciated, would extreme irritability and nervousness, resulting in occasional bursts of violent passion, weigh much in your diagnosis of insanity in the absence of other evidence and more prominent symptoms of insanity?

A. No; not in the absence of other evidences and symptoms of insanity.

Q. Standing alone?

A. Standing alone, they would not. If I had evidence that they stood alone, they would have no weight at all; because it is a common condition of the mind in those diseases.

Q. That is, the normal condition of the mind?

A. It is a common condition—irritability in those diseases.

Q. In just such a patient as that, with the same disease I have described, would the occasional fear of poison, or assassination, in the absence of all other leading or marked indications of insanity, be any evidence of it?

A. They would.

Q. Those would?

A. They would.

Q. Why do you make that distinction, Doctor?

A. Because these symptoms are very common with the insane, especially that kind of insanity that results from these physical diseases that you are speaking of—consumption and dyspepsia; but such a belief is something more deliberate than an outburst of passion, an occasional outburst of passion, or irritability of temper. Those may be exhibited in unguarded moments; but a person is not going frequently to entertain a belief that his food is poisoned, or that he is going to be assassinated, in my judgment, unless his mind is affected by the disease.

Q. Suppose that it was only an occasional expression of that fear, and that occurred only when the patient was in a towering passion, exceedingly enraged at the individual accused?

A. It would weigh in my mind in forming an opinion; that belief would.

Q. Suppose that immediately after this rage and passion had subsided, and the patient should call this very individual to his bedside and ask the person to bring his food—to cook it and administer his medicine, how would that affect the case?

A. Well, it would modify somewhat the influence that such a belief would have on the mind.

Q. Is not fear and dread, and apprehension of personal evil, one of the direct results of dyspepsia—one of the ordinary symptoms of it?

A. Well, there is a depression of the mind and melancholic state; a disposition to look darkly on the future.

Q. Isn't it one of the effects of chronic consumption to make the patient extremely sensitive to all atmospheric changes—heat, cold, damp, fog—in its last stages when the patient has become emaciated; nothing left but bones and nerves?

A. It is with regard to the other question; you have put the two diseases together, with symptoms which operate very differently upon the mind. As a general thing when the mind is impaired in consumption they are disposed to be hopeful and exhibit an unreasonable confidence in the future prospects of recovery. It is not a disease which depresses the mind; as a general thing dyspepsia does.

Q. With consumptives in its fatal stages are they not at times considerably dispirited?

A. Yes, sir; they are at times as the disease progresses, and they become more and more convinced that the disease will become fatal. But it is not an uncommon thing, nevertheless, for them to have strong hopes of recovery, and see bright prospects for the future, even a day or two before death. The spirits are generally buoyant in expression when the mind is not impaired by the disease.

Q. Dyspepsia ordinarily has a contrary effect?

A. It does.

Q. And the fear and apprehension of personal evil might be the direct result of dyspepsia, and if that should become—break out when the party was so enraged, would it have any very great weight in determining his sanity or insanity?

A. When a person seriously believes without any cause, that the food is poisoned, or that he is going to be assassinated, it is pretty strong evidence that the disease is affecting his mind.

Q. Suppose the person only shows that disease occasionally when

in a towering rage against that individual, and in fact has no such belief, but merely spits it out as a matter of venom and bitterness?

A. He might do that in a fit of passion, and then apologize and correct himself; under which circumstance it would not weigh much; but if it was a habitual thing it would certainly be an important fact in determining whether a person is insane or not.

Q. In that connection, Doctor, let me ask you what the effect of consumption is upon the appearance of the eyes?

A. Well, as a general thing the eye is more brilliant in expression. There is a clear brilliancy in the eye of consumptives; a clearness and brilliancy that does not generally exist in others.

Q. Isn't there sometimes what may be characterized as a glittering eye and sparkling brilliancy? In the advanced stages would it be anything unreasonable, Doctor, for a patient in that condition, nearly dead with consumption, and extremely nervous and irritable, if his nurse should come into the room with her clothing covered with steel buttons, that he should complain of it, as the light reflected upon his countenance and his eyes?

MR. BARNES—That is not this case. The testimony of the witness was not to that effect. It was that she had a *sontag* on, and it had steel buttons. He said that that drew from his brain; that was all the complaint he made about it.

THE COURT—You have a right to ask that question, but not in such a way as to confuse it with the other question, that is, as to the actual state of facts. You have a right to suppose that case, and it is proper enough that the distinction between that case and this case should be brought out in the question. If you say you do not state it as this case, then the question can be answered.

MR. PRATT—No, I do not say that that is this case, exactly. I merely present that case.

Q. Would that be anything remarkable, Doctor?

A. If he simply complained that the reflection of the light from the buttons hurt his eyes, I do not know whether it would be very remarkable. Still I think it would be rather an unusual thing for a person to complain of—so trivial a matter.

Q. Doctor, when the consumptive, in about the last stages of the disease, who has been raising or expectorating excessively, stops raising or expectorating, is that considered a good symptom—a symptom of recovery?

A. No; not in the last stages, it is not.

Q. Isn't it in the last stages of consumption, a bad symptom?

A. It is a bad symptom.

Q. Doctor, suppose the manifestations, as stated by Mr. Barnes yesterday, in his hypothetical question, only occurred occasionally, and that only during a brief period, and while the patient was very feeble, physically, and extremely nervous, and overburdened by business and important transactions, would you consider such occasional occurrences decisive evidences of insanity?

A. Well, taking all of the facts there, I should say that they were pretty decided evidences, even if occurring occasionally, unless it was proven that he was positively free from all these delusions, when they were not manifested by an expression on his part. The fact of his not uttering them every time he is seen, does not prove that they do not exist.

Q. Suppose that, during the intervals between the occurrences, he talks rationally on the same subjects, calmly and tranquilly?

A. Well, it would weaken the evidence somewhat.

Q. I understood you to say yesterday, in reply to Mr. Barnes, that you regarded his question as presenting this as the habitual condition of the mind, and not an occasional?

A. I did answer them upon that supposition.

Q. Upon that basis?

A. Yes, sir.

MR. BARNES—That was the way I put it, and meant it.

MR. PRATT—Q. Now, Doctor, suppose that, instead of the conduct of the wife being as a matter of fact, entirely blameless, she had insinuated to her husband, that a certain gentleman was making improper advances to her; that some months afterwards, the husband discovers that she has made half a dozen visits to that same gentleman at his office, and written or telegraphed him, making engagements to meet him at other places, without the consent or knowledge of the husband; that, upon these facts coming to his knowledge, he employed detectives to satisfy his suspicions upon that subject; and, after those detectives informed him that they could discover nothing, he directed them to abandon the investigation, and declares confidence in her virtue; would you consider the fact that upon two or three occasions, during the period of investigation he had expressed to some of his friends doubts of her chastity, and had employed detectives to ascertain the facts; any very striking evidence of his insanity?

A. Well, I do not know that the evidence would be striking, but I think that course of proceeding would be some evidence, however, even upon that hypothesis.

Q. Don't you know a plenty of men, Doctor, who are in the possession of all their mental faculties, who, if they learned that their wives had visited a gentleman in his private room half a dozen times without their consent or knowledge, would become excessively jealous and suspicious?

A. Yes, sir; I know many persons would. But not a sound mind. I do not know that the suspicion and the ill-feeling would all concentrate upon the wife. A man in his normal condition of mind probably would make some demonstration of enmity against those whom he supposed to be thus intimate with his wife. And from his—I have heard nothing in evidence with regard to any demonstration on the part of the person named in the hypothetical case of his having any ill-feeling towards any person but his wife.

Q. Suppose he did denounce bitterly the person in the same connection?

MR. BARNES—And at the same time was on the most intimate personal relations with him, and appointed him a trustee under a trust for the culture of the children?

MR. PRATT—Exactly; until the investigation had closed and he had satisfied himself.

MR. BARNES—During that very time.

MR. PRATT—During that very time.

MR. PRATT—Suppose with that, that he still keeps up his relations during that time while he is making the investigation to avoid the party suspecting, or any other reason he may assert?

A. Well, I think I would answer that the conduct was an evidence of an unsound mind. A man who would entertain such feelings to-

wards another, even though they should not be proven by investigation, would retain more or less of that jealousy towards the parties in my opinion, so much at least that he would not take him into such confidential relations.

Q. Suppose upon investigation he found there was no ground whatever for the accusation, would you still think he would be obliged to retain his enmity towards the person accused? On the contrary, would not it be the natural effect if there was any generosity in his mind, to treat him with more kindness for having erred against him?

A. Well, I don't know but it may be barely possible that such a case may occur, but I don't think it is the natural course that a man's mind would take after entertaining such suspicions towards another.

Q. You don't think it would be the natural course of his mind?

A. No, sir.

Q. Suppose, Doctor, that the husband and wife had been living together for a series of years in extreme wretchedness and unhappiness, continually quarreling and wrangling—

MR. BARNES—But that is not the case. The quarreling and wrangling was all on one side. The testimony is universal that her manner and conduct towards him was submissive in the last degree. And Father Gallagher said she wanted to remain by him through life, if he would give her only half a chance to live.

MR. PRATT—If the Court please, I do not see that is the evidence at this stage of the case.

MR. BARNES—Give the witness the facts.

THE COURT—You had better let the questions be asked, and then object to them, Mr. Barnes. Ask the question.

MR. PRATT—Q. Suppose, then, Doctor, that the husband and wife had lived together for a series of years very unhappily, without any love between them, but, on the contrary, only hatred, and trouble, and discontent; and that in the absence of the husband, the wife had broken into the house, and taken away and sold his furniture that he had locked up there; broken open his warehouse and sold a large quantity of grain, and that on his return she denied having sold these things, and persisted in the denial until the facts were about to be proven, and then confessed that she had taken and sold them; would you find the subject insane, because on a few occasions, in fits of passion and rage, and as one of the reasons for desiring his wife to keep away from him, he should denounce her to certain acquaintances as a thief and a liar?

A. No, I would not for these circumstances consider him insane for so denouncing her, if those were the facts.

Q. Now, suppose, Doctor, that upon the same state of facts she entertains hatred instead of love, and the husband, extremely nervous, impatient, irritable, the possessor of an estate of half a million dollars, a great bulk of which he is about to convey away for benevolent purposes; that it is evident to the wife that the husband can live but a short time; she knows he is about to make such a disposition of his property and leave her almost penniless; and if, while suffering, as before stated, from these diseases, the husband should express an occasional fear of being poisoned, but after the conveyance of the property was made he ceases to express any such fear, saying there was no longer any object in killing him now, as the property was gone, and nothing could be gained by his death; would you consider the mere



fact that under such circumstances and in that physical condition he expressed such fears, any evidence of insanity?

A. Well, I—unless it is shown the wife was a very immoral person, and somewhat desperate in her character, I would consider it some evidence of insanity that he should express such fear.

Q. If she hated him intensely, and knew that the man's estate was about to be placed beyond her reach; add to that fact that the great object and purpose of her married life, from its very inception, was to secure that property, the height of her ambition, the husband knowing all these facts—

MR. BARNES—[Interrupting.] I object to that as irrelevant and immaterial.

THE COURT—[After discussion.] I think I understand the question. It is very hard to lay down a rule how far an examination of the kind can go. For instance, if I lay down a rule that hypothetical questions of this sort may be put to any extent, then we get into the case all of the cases supposed by the Counsel. As a general rule, a party has a right on cross-examination to put hypothetical cases, but it must be such a case as is not calculated to prejudice the minds of the jury with regard to the case before them. It appears to me that this question involves a part of the case on the other side, and upon the proof of the facts suggested in the question, it would be a part of the case of those who defend the will. They would then have the right to ask Doctor Shurtliffe this question as propounded now; but I think the question as at present suggested is calculated to prejudice the minds of the jury, and if this is allowed, any other supposable case may be.

MR. PRATT—If the Court please, unless we ask it now, we cannot ask it at all.

THE COURT—You can bring the witness here. The Court will not presume that he will not be here. I heard that this question—in ruling out all hypothetical questions—but that this question in the present progress of this cause is improper to be put.

MR. PRATT—Mr. Reporter, please note the exception.

Q. Doctor, would you consider the fact that a weak and helpless old man in the last stages of consumption, suffering extreme pain and prostration, his mind intently occupied as far as his strength would permit, in settling and disposing of a large estate—would you consider the fact that he was careless and indifferent at times about the exposure of his person to those who were hateful and unpleasant to him, any evidence of his insanity?

MR. BARNES—I object to that; it is not the case. There is no evidence that he ever exposed his person to those who were hateful and distasteful to him. On the contrary, the evidence, so far as there is any, so far as heard from up to this time, is the evidence of Miss Frank Parker, Miss Blanchard and Miss Coffin, and they stated—

MR. PRATT—[Interrupting.] I will modify the question if the Court please, without waiting to take the ruling.

Q. Would you consider the fact of a weak, helpless old man in the last stages of consumption, suffering extreme pain and prostration, who is fully occupied so far as his strength would permit in settling up a large estate, would you think that if he was careless and indifferent about the exposure of his person at such times, an evidence of insanity?

MR. BARNES—I object to the question. There is no evidence that he was suffering extreme pain at all; not the slightest. On the



contrary, so far as it appears, he had a tolerably good time; he had a ravenous appetite, when any body gave him anything to eat, could curse and swear like a "Barbary Coast" ranger, and not having complained of pain whatever.

MR. PRATT—I insist on the question, your Honor, and will take the ruling of the Court.

THE COURT—Repeat the question.

[The Reporter reads the question.]

THE COURT—I will allow that question.

MR. BARNES—I except. I want an exception to that.

THE WITNESS—I cannot give a very definite answer to such a question as that. An occasional accidental exposure, some carelessness in that particular would be no evidence of insanity, at the same time there might be a willful exposure, a willful and offensive exposure or a grossly indecent exposure, that would be an evidence of moral impairment. But carelessness, simply carelessness of his exposure and occasional accidental exposure of his person, while he is prostrated and suffering, would be no evidence of insanity.

Q. Suppose, Doctor, a man to have been through life exceedingly economical, growing old, and more so as he grows richer, until economy became for years extreme parsimoniousness, denying himself as well as his family, the luxuries of life, for the mere love of money, and when sick and dying with the disease before named, and having a variable and capricious appetite, he asks the neighbors on a few occasions to bring him food, saying that it tasted better than any he could get at home, that his cooks did not know how to please him, would you consider such a request evidence of insanity?

MR. BARNES—I object to that. It is not in the case developed by the facts here. It is about one quarter of it.

THE COURT—I will allow the question to be put.

MR. BARNES—I except.

THE WITNESS—A. If he made this request more for a change, to obtain delicacies from his neighbors that he did not get at home, I would not consider it as an evidence of insanity; but if it was done simply out of parsimony, in a man of his wealth, I would consider it so. But in answering that question, I am aware that there are many instances of misers who act almost as unreasonably as that, but in many of those cases that we hear of there is at least some impairment of the mind; those that we read of in books. I have no right though to go beyond this—

Q. [Interrupting.] State about what you were about to state?

A. No, I have no right to state what I was about to state; it is not embraced in your supposition.

Q. Suppose as a matter of fact that at the time these requests were made he was destitute of suitable and proper food in his own house, and was alone pretty much, and neglected?

MR. BARNES—No; alone as a matter of choice.

MR. PRATT—Q. Alone as a matter of choice?

MR. BARNES—Not neglected at all.

THE WITNESS—A. I would have to consider the necessity of his being alone and destitute. If there was any necessity for it I would consider it no evidence of insanity for him to take food of his neighbors.

Q. Suppose his treatment of his servants had been such as to drive them out of his house, and he is, as a matter of fact, left alone

without food. I don't ask you whether his treatment in driving them out of the house would be evidence of insanity, but whether, these facts existing, no matter what the cause, the mere fact of his having sent for food to the neighbors, would be an evidence of insanity?

A. If he is haggard and alone, and unable to help himself, has no other means of getting food, it is no evidence of insanity that he should send for it to his neighbors.

Q. Suppose alone and yet being haggard as a matter of choice, he sends to the neighbors and asks them to bring him food?

A. Well, I do think it is an evidence of insanity; the fact of his sending shows that he is in communication with persons through whom he might obtain food for his own household; and no reason appears why he did not.

Q. No?

A. Yes, sir; I think it is evidence of insanity, if he be sending to the neighbors for food when there is no necessity for it, unless as I said before, it is simply for the change, for delicacies that he did not have in his own kitchen.

Q. Is not that very commonly the case, Doctor, that where persons are sick, and have been for a long time, and have capricious appetites, they relish food brought from abroad better?

A. Yes, sir; that is the case.

MR. BARNES—What was the question, "He sends for delicacies he cannot get at home?" The delicacies he was after were beefsteak and potatoes; baked potatoes.

MR. PRATT—Doctor, suppose a man naturally excessively vain and egotistical, having unbounded confidence in his own energies, judgment and correctness about all matters, exceedingly impatient of all opposition and contradiction, knowing himself hated and despised by almost everybody for his meanness, would you consider it any evidence of insanity, that such a man, when extremely sick, and nervous, and irritable, should denounce those who disputed with him about a matter concerning which he was extremely sensitive and confident that he was not mistaken?

A. No, I would not consider that an evidence, that standing alone?

Q. You spoke yesterday, Doctor, of what you called the monomania of suspicion; some new classification, the mania of tuberculosis?

A. I did.

Q. What are the distinguishing characteristics of that monomania?

A. They are, of course, extreme suspicion of everybody, those with whom they come in contact, particularly. Great irritability; sometimes melancholy and depression.

Q. Are those the habitual and regular symptoms of the patient?

A. They are the habitual and regular symptoms of the patient laboring under monomania of suspicion. Persons who have mania from tuberculosis, or are insane from tuberculosis, do not always have the monomania of suspicion; sometimes the insanity assumes other forms, but more frequently this form than any other of that class of insanity.

Q. Well, where those symptoms were not habitual, but only occasional, should a controversy arise? Would it then be any particular evidence of an impaired condition of the mental faculties?

A. No, not unless that were habitual. I would modify the answer in this; that it would depend upon how absurd their suspicions were, of course. But, to be general, all the suspicions of the patient laboring under that disease might not alone be an evidence sufficient to determine

whether the persons were insane, and would not be if it only occurred occasionally.

Q. If there was no evidence at all for the suspicion, you would regard these circumstances as pretty good evidence of insanity or monomania?

A. It would be evidence if the suspicion was habitual, yes, sir. That even would depend, as I said before, on the reasonableness of his suspicions. A man might manifest a general suspicious disposition laboring under such disease, even without any cause; and I would not determine from that alone that a person was insane. But if he suspected that he was to be murdered without any reason, by a person who had borne a good and benevolent character, or was to be poisoned by such a person, I would consider the suspicions so unreasonable as to be an evidence of insanity, provided there was no cause for such suspicion.

Q. Is monomania, Doctor, ever primary in its character?

A. What do you mean—does insanity ever manifest itself first?

Q. Yes, sir. Is it not a transformation always from melancholia?

A. No, I don't think it is.

Q. Is it in the majority of cases?

A. It is in many cases; but it is not always.

Q. Melancholia is purely emotional, is it not—true melancholia?

A. I believe it is so classified; yes, sir; properly so, too.

Q. Well, in cases of monomania is not there always an emotional disturbance which precedes the disturbance of the intellectual faculties some length of time?

A. Will you put the question again?

Q. Is not there in cases of monomania always an emotional disturbance which precedes the intellectual disturbance some space of time?

A. Well, I cannot say that there is, always.

Q. Is there generally?

A. I believe there is, generally, but I am quite confident it is not always the case.

Q. The emotional and intellectual disturbances sometimes arise simultaneously, do they?

A. Yes, sir; that is to say, those cases where the first manifestations of insanity is exhibited upon some particular point.

Q. Cases of monomania?

A. Yes, sir; without any previous causes of melancholy or other mental derangement.

Q. Those are rare cases, are they not, Doctor?

A. Well, I don't know that they are so very.

Q. But in the majority of cases, the other rule prevails?

A. I am not certain about that.

Q. What do you think about it?

A. Well, I am inclined to think that—what other rule do you mean?

Q. That the emotional precedes for some space of time the intellectual disturbance, as a general rule?

A. I think it does, as a general rule.

Q. Doctor, is not the fear and apprehension, and dread, the peculiar symptom of melancholia rather than monomania?

A. Well, it is. The monomania may take that form of fear, and the fear may be more intense than in melancholia, but there is generally

depression and fear of evil in many cases; general depression of spirits, and a want of hopefulness in the future.

Q. Now, Doctor, as a matter of theory and principle, can a deluded opinion on one subject only, unaccompanied by hallucination, be recognized as insanity?

A. A deluded opinion on one subject alone?

Q. Without any hallucination?

A. Yes, sir; by a deluded opinion I understand you to mean a delusion?

Q. Yes, sir; a deluded opinion on one subject without any hallucination; does it not constitute insanity?

A. It may constitute insanity without—I don't know as I understand—you don't mean, of course, a deluded opinion without any insane delusion or unreasonable delusion?

Q. Well, if I said a delusion, that would of course imply insanity. I put the question in that form; I don't know as I can make it any clearer?

A. I understand the question. I say a deluded opinion that cannot be remedied by reason or by evidence, even though there be but a delusion and no hallucination, is an evidence of insanity.

Q. Does it alone constitute insanity?

A. It may alone constitute insanity. It would be a pure literal monomania.

Q. Do you recognize the work of "Bucknell and Tewke on Insanity," as a standard work on that subject?

A. Yes, sir; it is a standard work.

Q. Is it possible, Doctor, to determine positively the existence or non-existence of insanity in the majority of cases without giving attention to the condition of all the mental faculties and antecedents of the patient? Perhaps I ought to make that monomania; limit it to that. Is it possible to determine positively the existence or non-existence of monomania in the majority of cases?

A. Yes, sir; it is possible to determine positively the existence or non-existence of monomania. I understand the question to be, in the majority of cases is it possible to determine?

Q. That is the way I presented it to you.

A. Well, I think in the majority of cases of monomania it would be necessary to know—I cannot say that it would be necessary to know all of the circumstances, but there are many cases that present so much doubt that it is necessary to know all of the circumstances in order to determine. I would not say, however, because I am unable to say that it is so in the majority of cases.

Q. Well then, you will say the converse of the proposition, that in some cases the existence or non-existence of monomania can be determined without reference to any of the other mental faculties or any of the antecedents of the patient?

A. Well, I don't think it is necessary, in some cases, even to know the antecedents of the patient. In some cases of monomania there is a very extravagant and unreasonable delusion which is without foundation in fact; a delusion of the greatest conceivable absurdity; if a person adheres to it in spite of all reason and facts which can be presented, it is sufficient to establish his mental unsoundness, without going into the history of his life, or inquiring into all the circumstances of his case.

Q. Just give an illustration of that case—one which you have in your mind. Select one for yourself.

A. Well, I will give cases that have been hysterical. If a man conceives his legs to be glass, and adheres to that belief in spite of every reason to the contrary, I should say that alone would be sufficient to establish the fact that the man was of unsound mind.

Q. Is there any such thing, Doctor, as insanity of a single faculty?

A. I don't know how that may be. It would involve a sort of metaphysical discussion of the mind that perhaps I would not be capable of, and I might not come to correct conclusions in.

Q. I won't press you to answer the question; I don't know as it is of any importance any way; if you don't feel like answering it without some reflection. I will ask you, then, as a general thing, are not all of the faculties of the mind involved more or less in cases of monomania? Oh, it may be more striking in one faculty than another; yet, generally, are not all of the faculties in some degree impaired or involved?

A. They are liable to be; I cannot say that they all would. They certainly may be all influenced by the monomania.

Q. Well, to constitute a case of pure monomania, Doctor, must there be an insanity or disturbance of all of the faculties of the mind relative to the particular subject or person on which the party is monomaniac?

A. Well, yes; I think all of the faculties of the mind would be affected upon that subject; would be influenced by the man's particular belief that constituted his monomania or delusion.

Q. If there could be or is any such thing as insanity of a single faculty, that would necessarily be of the purely emotional, would it?

MR. BARNES—I would like to ask the counsel, for my own information, simply, what he means by a single faculty?

THE WITNESS—If you permit me to answer the question, I will answer it in the negative; because, for instance, the faculty of memory is not an emotional faculty. A man may lose his memory, and yet will reason correctly.

Q. Would the mere loss of memory constitute monomania?

A. Well, it would constitute an impairment of the mind, an absolute loss of the memory. I only made that in answer to your question to show that such a thing might be possible, in my opinion.

Q. Are not a great many cases of monomania purely physical manifestations—what you call monomania, and what the writers classify monomania? Are not a great many cases of it simply a purely physical?

A. No, not purely physical. I cannot conceive how a disease of the mind can be regarded as purely physical, in common language. The cause may be physical.

Q. Take the case of nymphomania for an illustration. You recognize that as a species of monomania?

A. I understand you now. The cause of all mental unsoundness as to that form of ideas, I regard as physical.

Q. Is not the effect of nymphomania simply upon the physical system, and not upon the intellectual faculties?

A. Well, I don't think it is entirely always; because the physical disturbance need not amount to a mania; that is, the brain is mythical generally in such cases. The cause, of course, is physical; but the



indecent demonstrations that arise in that disease must result, and do result from an impaired mind.

Q. Are not the lascivious ideas, Doctor, the result of the spinal irritation, just as hunger or ideas of food, rather, are the result of hunger, simply and purely physical?

A. That all may be. It may be the result of the physical irritation, but it affects the mind. It affects the propensities in a marked degree.

Q. Yes, or affects the propensities and emotions? Does it necessarily impair the mental powers? I suppose it would after a long series of years, after considerable indulgence undoubtedly, impair the whole physical and mental system?

A. Yes, I would say that it impairs—where that condition amounts to nymphomania, it impairs the mental powers and destroys the whole character and destroys the modesty of the female. It deprives her of the very use of the will, and she is unable to conduct herself with that propriety which she would with a sound mind.

Q. It simply debilitates the brain, and weakens the mind?

A. Yes, debilitates the brain, and that is my answer, that it is not purely a physical disease, that it affects the mind.

Q. Doctor, doesn't the hypothetical case, as stated by Mr. Barnes yesterday, come nearer presenting a case of what is called moral insanity, in your profession, than of monomania?

A. No, I don't think it does. These classifications are somewhat arbitrary; they don't cover fully each individual case; but the permanence of the delusions in his hypothetical case on a very few subjects, two or three, I think entitle it to be classed as monomania.

Q. Do they separate them, entirely distinct, or nearly, from the moral insanity?

A. Well, I don't say that they do. This term, "moral insanity," is not a very scientific or definite term. In these monomanias there is of course a perversion of the faculties which constitute more or less the moral infirmity and unsoundness.

Q. The distinction between those two classes of cases, and between eccentricity and monomania is very hard to trace sometimes; I suppose they are very much alike?

A. Well, they may run into each other; to a certain extent they do.

Q. But this case is more a monomania than it is of moral insanity, as you classify those?

A. Yes, I regarded it as belonging more particularly to that of monomania; it is not literally a monomania. The term is not generally used in its literal sense.

Q. Now, Doctor, may not all of these bursts of passion alluded to by Mr. Barnes in his hypothetical case yesterday, be attributed to a vile, violent and brutal temper, accompanied by low and vulgar instincts, yielding and given up to for a series of years, as readily as to the loss of intellectual faculties?

A. Well, I take the supposed case as a whole, of course. I answer upon his hypothetical case, taking all of the facts of the supposed person, I can see that that kind of brutality might exist possibly without perhaps any impairment of mind, in some very ignorant and naturally illy organized person.

Q. Doctor, suppose the patient to have been a man of mean, low, vulgar instincts, bitter, violent, vindictive temper and passions



naturally, though all his life he has never restrained or controlled this temper or passion, but indulged them upon every provocation; that he has lived for years most unhappily with his wife, without love, but on the contrary with mutual hate; that when worn out with disease, enfeebled and dying, and neglected, he should in an occasional burst of passion, when his wife was the subject of discussion, accuse her of infidelity, falsehood and theft; might not all these be attributed to this bitter hatred, and mean, low instincts and disposition, and temperament?

MR. BARNES—I object to that. I object to it because it is not founded upon the facts proved.

MR. PRATT—If the Court please, there is no fact proven in this case yet.

MR. BARNES—I have been here nearly two weeks, these facts I believe; I labor under that delusion. There is no such evidence here at all. I don't know what the counsel is trying to make out from this kind of question. He is here representing the guardian, the so-called guardian of little Horace Hawes, and in his interest it would seem from the question, is trying to make out his father a cruel monster. I don't know as that is a legitimate part of his cause, but if it is, let us have the facts upon what to base the question.

MR. PRATT—If the counsel, instead of making speeches, would suggest wherein the evidence does not apply—

MR. BARNES—[Interrupting.] The counsel makes this a case of mutual hatred. He has no such evidence in the case at all. I think I am borne out in saying it was exactly the reverse. It is one of those curious illustrations of feminine character, of which we find a type in just such people as the woman who loved Bill Sykes the murderer, who lifted up her hands to God, when he was beating her brains out with a club, and prayed for his forgiveness and his love.

MR. PRATT—I have obviated that objection, if the Court please. Is there any other, Mr. Barnes?

MR. BARNES—Yes, they are as plenty as blackberries.

THE COURT—Repeat the question.

MR. PRATT—Suppose Horace Hawes to have been a man of low, mean, and vulgar instinct—of bitter, vile and vindictive temper, naturally; that through all his life he had never restrained or controlled this temper or passion, but indulged them upon every provocation; that he had lived for years most unhappily with his wife; that for years he had hated her; when worn out with disease, enfeebled, dying, and neglected, he should, in an occasional burst of passion, when his wife was the subject of discussion, accuse her of infidelity, falsehood and theft, might it not all be attributed to the passions, and low and vulgar instincts, and nervous and feeble condition of the patient?

THE COURT—I overrule the objection as the question now stands.

MR. BARNES—I object to the question, now, further—your Honor overrules the objection?

THE COURT—Yes, sir.

MR. BARNES—It seems I am in—

THE COURT—[Interrupting.] I cannot hear you on that. I will give you the benefit of an exception. I cannot hear objections to the question after the ruling.

MR. BARNES—I didn't understand. Your Honor didn't give me a chance to object. The counsel read the question, and your Honor overruled the objection. I didn't argue it at all.

THE COURT—I will hear you. I will lay it down as a rule that whatever question is asked, whatever objections there are to that question must be presented altogether, or we will never get through with this case.

MR. BARNES—The counsel himself, when he read the question over, says, “I will obviate one objection;” and then read it, and then, without giving the counsel an opportunity to call the attention of the Court to it, the question is put.

THE COURT—I will give you an objection to it.

MR. BARNES—Very well. I object to putting the question as applicable to Horace Hawes.

MR. PRATT—I have altered that, and say “Suppose the patient.”

MR. BARNES—Then I object to the question in the use of the term “vulgar in his instincts and habits.” Now, I don’t think there is anything in this case that shows that Horace Hawes, during all his life, was a man of vulgar instincts. On the contrary, the evidence here, so far as the counsel has succeeded in bringing it out, has been that he was a man of high intellectual order of mind and character; that he was a man who loved truth; that has been the burden of the song; who could not see a shadow of an untruth or wrong-doing without having his virtuous frame smitten as by paralysis, shook all over, and made very mad by it. Now, the whole tendency of the case, if he has made any at all, has been to that effect; and when he comes to put the case, “Suppose the patient has been all his life of low, vulgar instinct, brutal and unrestrained passions from his youth,” what light can a question of that kind throw upon a subject upon which we are all trying to get light and intelligence. Is it proper and fair that a question should be put in that way to draw out an answer in such a way as to have an effect upon the minds of the jury, instead of a candid opinion of the facts as they appear in this case? That is what I object to; and I say that the question is not authorized and justified. Your Honor has already ruled upon this subject, in the former question; I think this is the same question. The man was bad enough, but don’t let the counsel of the guardian of his son try to make him out a born devil.

THE COURT—The former ruling of the Court was to the effect that any question which would be in the opinion of the Court calculated to prejudice the mind as applicable to the facts before the Court, the Court would not allow it to be put to the witness; and in allowing some questions to be put, and others not to be put, the Court has taken that into consideration in making its rulings. The question of insanity is a hard question to understand; and I said, by way of illustration, that any question could be put so as to bring out and apply the instruction of the expert to the Court and jury, which would not in the opinion of the Court prejudice the minds of the jury in regard to the case at bar. That is the distinction which I had in view in the rulings that I have made. It is a very hard thing to understand, and has been so commented upon by the ablest jurors as well as the ablest of the medical profession. Mr. Justice ——— I think made use of the ordinary expression: “a witness must explain these matters in the best way he can.” Now, any question that I think will not prejudice the minds of the jury I will allow to be put, by way of illustration; any questions that I think will prejudice the minds of the jury I will refuse. I do not think this question will come within that ruling, put in this way. Therefore I allow it.

MR. BARNES—I except.

MR. PRATT—Q. Suppose Horace Hawes to have been a man of low and vulgar instinct, of bitter, vile and vindictive temper naturally, that through all his life he has never restrained or controlled his temper or passion, but indulged them upon every provocation; that he has lived for years most unhapily with his wife, that for years he had hated her, when worn out with disease, enfeebled, dying, and neglected, he should in an occasional burst of passion, when his wife was the subject of discussion, accused her of infidelity, falsehood and theft, might it not be all attributed to the passions, low and vulgar instincts, and nervous and feeble condition of the patient?

THE WITNESS—A. Well, I would have to answer that in connection with other suppositions that have been made. He might, in a temporary outburst of passion, to gratify his disposition for abuse, and to express his habitual hatred for her, use that kind of language occasionally in his own house or with his friends, and I think it would not, so used, be an evidence of insanity, but when the idea is carried beyond that as it has been, as shown by the questions which have been put to me by yourself; and he has secretly employed police officers to follow up her footsteps and to endeavor to discover some truth in this alleged violations of chastity on her part, and misconduct, it showed that it amounted to a belief on his part; and if not true, it was a delusion, or may have been a delusion; at any rate it showed that there was some belief, and that it was not simply an ordinary outburst of passion, not unrestrained anger for the purpose of abusing his wife without a cause. Those acts, those indecent, improper acts which you have related, had frequently occurred in that way; but they are generally not carried beyond the line of their occurrence; they are not pursued as facts, where the mind is sane.

Q. Well, Doctor, would the fact that he employed detectives to ascertain whether this infidelity existed or not, would that show a belief in his mind that he did, or only a suspicion and desire to know the truth?

A. It would establish the fact that he had serious suspicions.

Q. Exactly; and that he wanted to know whether it was true or false?

A. It makes a different case of it than that which you now present to me, where there is a simple temporary outburst of passion; which is simply an expression of hatred of his wife, and his low and vulgar instincts.

Q. I presented the other question to you before, and now I would like to have a direct answer to this; whether these occasional outbursts merely, separated and regardless of other facts, would be any evidence of insanity?

A. In such a degree as you present it would not, standing alone.

Q. What is the marked distinction between eccentricity and monomania?

A. Well, the marked distinction is this: In the first place, one is the result of a peculiar organization, and the other is the result of disease. A man ever so eccentric will generally reason calmly and rationally upon the subjects upon which he entertains peculiar views. A person who is a monomaniac, at once upon attempting to reason him out of his unreasonable belief, becomes excited, rejects all reason, the delusion takes full control of his reasoning powers, and he is unable to reason upon the subject. The delusion is dominant over all the other

faculties. But in a person who is only eccentric, and whose mind is sound, he reasons with calmness, and sometimes laughs at his own oddities.

Q. Where the patient himself recognizes his eccentricities, knows them himself, and appreciates them, and still persists in them, that is simply eccentricity; that he reasons upon them, and understands and admits it?

A. And don't become excited over them. He don't necessarily admit them as eccentricities, but he talks of them with calmness, and can be reasoned with.

Q. Now, suppose, Doctor, that a paper, document, will, or deed of foundation, or any other instrument, was presented to you, and you found it exceedingly peculiar and strange in its provisions, but you still found that it was just exactly such an instrument as might be expected from the character, habits, and whole life of the man who made it, would you then consider the instrument as the offspring of insanity or monomania?

A. Will you repeat the question?

Q. Suppose—take a case by way of illustration: Suppose a will was presented to you which you find to be in its provisions exceedingly peculiar, and eccentric, and strange; but when you come to investigate the character, and the life, and the modes of thought, and habits, and constitution and temperament of the man who made it, and you find that the instrument is just exactly such an instrument as you would reasonably expect to be made by this man, would you then consider this instrument as the offspring of, or tainted with his insanity?

A. Well, I might, or might not; I could not say as to that. It don't appear by the question but what he was admitted to be insane, as I understand.

Q. No; I ask you whether, judging from that fact alone, judging from the instrument itself, it being just such an instrument as you would expect to emanate from a man of his habit, temperament, disposition and modes of thought through life, and at times when there was no suspicion of his insanity at all, would you then consider the instrument itself, because of its peculiarities and eccentricities, the offspring of insanity, or tainted with insanity?

A. No, I would not, if it was just such a will as you would expect from him, from his peculiarities, at a time when there was no suspicion of insanity.

Q. That is all, Doctor.

*Re-Direct Examination* by MR. BARNES—Q. You were examined at some length by the counsel on the other side as to the opinion a man entertains contrary to evidence, contrary to the weight of the evidence—the preponderance of evidence. Now, I want to ask you with relation to this subject one or two things only: First, are there not many cases of insane delusions where the delusion avows itself originally on some slight circumstance, and where the inconsistency consists in magnifying this circumstance beyond all reasonable bounds?

MR. PRATT—If the Court please, I would like to have the Reporter read the question.

[The Reporter reads the question.]

MR. PRATT—There is no objection.

THE WITNESS—A. Well, the insanity originates with the insane

delusion, and it is more and more manifest as this is magnified beyond all reasonable bounds.

Q. Then, may not this extravagance of judgment be as good in proof of this being a delusion, as taking up of some absurd prejudice that is utterly unfounded, or rests on no basis whatever? Suppose a man has a slight defect of vision in one of his eyes, and he believes himself to be perfectly blind, and acts as a blind man, though his eyes enable him to see; it is perhaps as slight as a cast in the eye, and he believes himself to be totally blind, and won't walk without assistance. He gets somebody to lead him all of the time, and pretends he cannot take up anything, or see or do anything more than a blind man; still his eyes are in the condition I have mentioned. Is not this as perfect a delusion, if he believes himself to be blind, when there was nothing the matter with his eyes?

A. Yes, it is.

Q. Take this case by way of illustration: Suppose a man is the proprietor of a large domain, an extensive and valuable property, and he loses a small part of it—a little outlying piece of land—and his mind runs upon that subject until he convinces himself that he has been deprived of the whole of it. Now, if he persists in that conviction in spite of argument and all evidence to the contrary; and not only so, but suffers that conviction to poison and preclude his enjoyment of the ample portion that still remains to him during the balance of his life; is not this as essentially an insane delusion as if he was still in possession of every acre of his land, and had not lost a bit of it?

A. It is.

Q. Now, I will suppose another case in answer to the supposition that has been made here by the counsel: Suppose the husband of a wife blameable in some trifling particulars, and to a slight extent, as, for instance, in having parted with a small portion of grain and wheat from the estate on which she lives, in order to support herself and the child, which stuff has been raised upon the farm and under her charge, and presumed to be her right to dispose of it; and having on another occasion sought one of his particular friends for the purpose of obtaining a reconciliation with her husband; and he takes occasion by reason of her selling a little wheat and a little grain, or talk with one of his friends, without there being the slightest reference of any sort or kind between them, takes occasion from these to pronounce her—to call her a fiend of hell, a damned disturber, a devil, a damned devil, a poisoner, and an assassin lying in wait to take his life; a common prostitute, and of degraded habits; degrading to the extent of willfully corrupting and debauching the minds of her children; if, moreover, he has through life, acting under and upon that suspicion to the destruction of his own and his wife's peace and happiness, and to the actual horror of every one really acquainted with the accusations, and with the evidence upon which he based them; is he not in such a state of moral delusion—as much insane in regard to that wife—as if her conduct had been irreproachable in these petty matters?

MR. PRATT—If the Court please, I object to the question. It is re-opening the whole field of the direct examination. That these matters have been gone over once, and the witness has been cross-examined. Now, suppose it would be competent for the Court to allow this examination; on the other side, if, in the course of the cross-examination, we had developed any new fact or idea, to examine this witness as to that particular thing, and that alone; but this throws



open the whole field of re-examination, and I object to it on that account. And then it is liable to the objection stated yesterday in his hypothetical case. I make those objections also, though they were overruled yesterday. But the objection being made on the other ground, it would involve the necessity of our going over that again, and bringing it down somewhere within range of the testimony in this case. This is too broad and sweeping to be admissible in this present form, and I apprehend that the objection must be sustained upon the facts. Certainly we cannot go into a general examination of this witness; and that is exactly what that question implies, or purports.

MR. BARNES—If I recollect right I put a hypothetical case to the witness yesterday, and he answered. The counsel's examination in great part was directed to the theory that there might have been some evidence to warrant a man's conducting himself in this way; but whether he would consider a man under a state of insane delusion, who had some evidence, although the preponderance of evidence might be against him still persisted in clinging to his own plan notwithstanding the weight of evidence was against what he thought in every man's judgment. In other words would be decided to be sane or insane according as he might decide the weight of evidence; and he answered that: That was a new point in the case, and was argued at some length. I simply put this question to the witness for the purpose of bringing to the intelligence of the jury the proposition that a man may be insane upon a given subject, and that insanity may grow out of a very slight fact; and the circumstance that that fact exists does not demonstrate his sanity at all. For instance, in the case that I put, of the man who was squint-eyed, and thought he was blind; or the man that had large property and lost an acre, and persisted in conducting himself—acting upon the theory that he was a beggar, and hadn't a cent in the world, though he rode every day over these broad acres. Now I bring it down to another case. This was not objected to. Suppose the case of a husband, a man who has got a wife who has been blamable in some little respects; who may have purchased a bonnet too much, or a dress too nice, or who may have been left by him without means of support, and has sold grain for the sake of getting bread; and has broken into her own house; and that comes to his knowledge, and with this only as a basis he proceeds to denounce her, and to run to this extent, isn't he as much an insane man—a monomaniac, supposing there is such a case, as if he had taken all these occasions without any evidence whatever? That is all. Most certainly that seems a proper question in reply to this that the counsel has been putting here.

THE COURT—The question is objected to because it opens up the case, and again, that it is a hypothetical case. I don't think it is amenable to either of these objections.

MR. PRATT—[To the Reporter.] Take down these objections, please. First, that the question is simply a re-examination of the witness on matters to which he testified fully in his former direct examination; second, that it assumes the existence of a large number of facts which are controverted in this case.

THE COURT—That is not your objection.

MR. PRATT—If the Court please, I said it was liable to the same objections that I made yesterday, and now I want to state the objections, and though they were overruled yesterday, I want them overruled at this time also. I want to state not only the general objection that it



is re-examination, but all of the objections I have made to the case yesterday.

THE COURT—You did not state it so in making your objection.

MR. PRATT—That was clearly my intention. I remarked generally it was liable to all the objections made to the hypothetical case yesterday; and the additional one, that it was re-examination; and I ask now to have all those objections entered by the Reporter. Do I have permission to have all of these objections entered, your Honor?

THE COURT—Yes, sir. I was not passing upon the question, though upon those objections. The objections that were made yesterday, that the hypothetical case could not be—that it involved facts which could not be proved. To-day, you objected to it as a hypothetical question, as I understand, and that the question involved matters which had been gone over in the previous examination. To these objections, I did not think the question was amenable. Now, you say, you intended to state that you intended to include in your objections all the objections that you made to the hypothetical question yesterday.

MR. PRATT—I stated, your Honor, in so many words, that it was liable to all the objections that were made yesterday, and I supposed that was the same as saying, I renewed these objections.

THE COURT—You will have to point them out.

MR. PRATT—I supposed the fact of their having been discussed yesterday would save the trouble of having them pointed out again. They referred to facts stated in a hypothetical question. They are not now before the jury, and I don't see how you can point them out.

THE COURT—I propose to point them out now. That is, to put the objection in form; second, that it assumes the existence of a large number of facts which are controverted in this case, and on which the jury have yet to pass, and omits other material facts in evidence.

MR. BARNES—It don't assume anything. It is "supposed" all the way through.

MR. PRATT—[Continuing.]—Third, that the question is too general, covering too large a number of conditions, and presenting to the witness no definite question on which an intelligible answer can be given.

MR. BARNES—You had better let him try and see whether he can or not. If the witness objects that it is not intelligible to him, I will try it again.

MR. PRATT—I object to it on that ground; I don't ask him whether he objected to it or not. I guess that is all, your Honor. I think that includes all. I think the fact that it is too broad and sweeping, and extreme, is involved in the last objection.

THE COURT—Do you desire to discuss the question any further, Mr. Barnes, as to these objections to that question?

MR. BARNES—No. I would like to try the witness, or see whether he can understand it, and if he cannot, I will put the question again.

THE COURT—Will you read that question again?

MR. BARNES—My idea of the cross-examination was this, that when he came to examine the witness, he turned the bulk of his examination to the proposition that there might be or was some evidence to sustain this prejudice on the part of the man; and, of course, if the wife was of the character that he supposed, there is no extent, of course, to which the man might not go in denouncing her. There is no doubt about that. But the question put to the witness was, first, of a woman totally without blame. That was originally my proposition. She is without blame upon the evidence as it stood. He brought into it, in

cross-examination, the elements of blame, and assuming evidence on both sides. He assumes that she was bad, and had done some very improper things; that she had broken open his granary, and taken grain from him; and broken into his dwelling-house—as if a woman could break into her own house!—breaking into his dwelling-house; going to the room of some of his friends without his knowledge and consent; and admitting that there was no more in it than that. Now, he put the question to the witness upon the preponderance of truth, whether if a man persisted in believing his own case, what the preponderance of truth would teach another man to disbelieve, would that constitute insanity in his mind? And the Doctor said: “No, it would not.” I wanted to assume a case, not of a woman wholly without blame—slightly blamable in certain respects, such as stealing hay and grain, for the purpose of supporting life, breaking into her own house, and taking therefrom something she wanted to use; those being facts. Now, he takes occasion from this to call her “a fiend of h—ll,” “a d——d disturber,” “a devil,” “a d——d devil,” “a poisoner,” “an assassin lying in wait and plotting to take his life,” “a prostitute,” and of degraded habits—degraded to the extent of corrupting the minds and morals of her own children—if, moreover, he be found acting under and upon that conception, to the destruction of his own and his wife’s peace and happiness, to the horror of every one really acquainted with the accusations into which his fancy had betrayed him, is he not as much in a state of moral delusion, and so insane, in regard to his wife as if her conduct had been wholly irreproachable in these petty matters?

THE COURT—I do not understand the commencement of the hypothetical question. How did you commence it?

MR. BARNES—“Suppose that the husband of a woman.” I had just been putting him two cases of unquestionable insanity, founded upon a slight circumstance, which the patient magnifies to an unreasonable degree; as, for instance, the case of a man who, because his eyes are squinted, or being squint-eyed, believes himself to be totally blind; as, for instance, the man, who having a large property, and loses one lot, believes that he has lost them all, and is a pauper. And then I followed it up with the case of a pauper, who, having a wife, with certain frivolous, foolish, extravagant wants, breaks into a warehouse, and steals hay and grain, in order that she may get something for herself and child to eat; and he, upon that circumstance, calls her frequently “a thief,” and “a liar;” and she, when detected by the old d—l, might say she did not do it, as a child might deny she had taken an apple from the table; if, under that delusion, founded upon these trifling facts, whether a man, who is controlled to a certain extent by this delusion, is not just as much under an insane delusion, and so insane, as if she never had touched a grain of wheat, or a bundle of hay, and had not unlocked the door of her own house, when he was out of town, and gone into it? Now, I am certain that is a proper reply to the question, because the counsel has taken from the physician upon the stand, some testimony, some statements upon which an argument might be based, that the man was not insane, who had any evidence whatever upon which to base this delusion, admitting it to be a delusion. So, I carried it out in that way, and asked the question, is he not just as much under an insane delusion in respect to her, as if he had no ground whatever for it? That is, assuming that there was something in what the counsel said. He was allowed to put that question. In other words, it is put-

ting a case of extreme delusion, founded upon a trivial circumstance; that is all. The examination in chief being directed wholly to the point of a wife entirely without blame, of any sort or description.

MR. PRATT—I would like to make a suggestion, your Honor. When I presented those questions upon the cross-examination, I stated in each one of them specifically the acts, what they were. Now, the counsel proposed to state generally; suppose the wife was a little to blame about something. It may be that it would be competent for him to cross-examine upon the proposition presented, exactly as they were presented; that is, taking the same specific statement of facts; but then, it would be simply an examination of my cross-examination. It would not be a re-direct examination. I should then be entitled to turn again, and to cross-examine the witness upon these new facts proposed; and then, I suppose the counsel might rise again, and propose an examination here again, upon those new facts I might bring out in the second examination, and thus, right here, the inquiry would be interminable. But, whenever I presented to your Honor a question, in which there seemed to be any evidence, that it would prejudice the jury, the question was rejected.

THE COURT—You did not make that objection at the time.

MR. PRATT—It seems to me that it is necessarily embodied in the questions I have named.

THE COURT—That is a question in my own mind.

MR. PRATT—It seems to me that is necessarily embodied in my first objection. That is, that the way now is merely to re-open the case. It necessarily runs into that, and it must go with the other objections, that it assumes facts which do not exist, of which there is no evidence.

THE COURT—I think the question is amenable to the objection. It is so mingled with the case at bar, that I think it is a question that is calculated to prejudice the minds of the jury, that the case supposed is connected by a link so closely with the facts as they stand here, that it is impossible for the jury to consider it as a separate case. Yesterday the question was amenable to that objection; and though it might be treated as a hypothetical case, and though the jury has a right to weigh this answer as applicable to the case, still it does involve facts in the hypothetical question which is not before the Court.

MR. BARNES—I will strike out that part of it which is not before the Court. Suppose the wife of the husband really blamable in some parts, and he to a certain extent takes occasion from this to denounce her?

THE COURT—There is no evidence that she has done anything wrong.

MR. BARNES—I am putting a supposed case.

THE COURT—You supposed a certain lady had gone without the consent or the knowledge of her husband to visit the house of a friend. I overruled that, and drew the distinction; that if any of these hypothetical questions were so drawn as to prejudice the minds of the jury, that I would not allow them to be put. I think it is impossible to put the question, as you put it now, as a suppository case. I think it is amenable to that objection. I will sustain the objection.

MR. BARNES—Well, I am utterly in the dark. Upon my word, I must signally fail in making myself understood.

THE COURT—You can take an exception, Mr. Barnes.

MR. BARNES takes an exception.

MR. BARNES—Doctor, to what extent does general eccentricity, if proved as a coincident to the particular delusion under which the patient labors, assist in the proof of partial insanity, where partial insanity is suspected to exist? I will repeat the question. To what extent does great general eccentricity, if proved as a coincident to the particular delusion under which the patient labors, assist in the proof of partial insanity, where that partial insanity is suspected to exist?

THE COURT—I have no objection to this question.

WITNESS—To what extent does a great general eccentricity go to prove insanity?

Q. Yes, sir. To what extent does a great general eccentricity, if proved as a coincident to the particular delusion under which the patient labors, assist in the proof of partial insanity, where that partial insanity is suspected to exist? How would you regard it—to what extent would you look?

A. I don't think it is important in going to prove the existence of insanity; we consider it as rather a predisposing cause. It shows rather a poorly-balanced mind, that would be overwhelmed by an exciting cause more easily than one more evenly balanced.

MR. BARNES—Then, in a case where the delusion in a man's mind was that he had been robbed, for instance, of his property, you would look to see what peculiarities he had, or views, or love of property, of money, and of feeling himself robbed upon slight occasion, or with very little occasion; extreme meanness and extreme parsimoniousness, that being one phase of general eccentricity, you would consider as an element in determining whether he was partially insane upon the theory that some one had robbed him, wouldn't you?

A. Well, I cannot say that that would weigh much.

Q. Is it easy always to distinguish the line which lies between great eccentricity and insanity?

A. It is not always easy.

Q. Don't you often find a person who is insane, markedly insane upon some one particular, and highly eccentric and peculiar in other particulars?

MR. PRATT—I object to that question and examination, on the ground simply that the question having been asked and answered, it is simply going over the direct examination, and is, I assume, for the purpose of having the last impression on the mind of the jury. The Doctor has stated that twice, at least, in answer to that very question.

MR. BARNES—To whom?

MR. PRATT—Once to you; once to myself.

THE COURT—I will overrule the objection.

MR. PRATT—The Reporter will note an exception to the ruling.

WITNESS—What is the question?

MR. BARNES—My question is this: Do you not often find a person insane on one particular, and highly eccentric in many particulars?

A. I do.

Q. Are there not many madmen who, while being mad, are capable of a high degree of self-control, if they will exert it?

A. There are.

Q. State whether or not the cunning of such persons, when bent upon a favorite scheme, enable them to practise the utmost self-control, and conceal the infirmity under which they labor, while they are accomplishing their object?

Mr. PRATT—I object to that question, if your Honor please, on the ground that it is an attempt to put the answer into the mouth of the witness directly.

Mr. BARNES—Is it or not known that the cunning of madmen, when bent on a favorite scheme, enables them to practise the utmost self-control, and to conceal the infirmity under which they labor, while they are engaged in the accomplishment of that object. I think that was the language of the question.

Mr. PRATT—I object, that the question is suggestive of the answer.

Mr. BARNES—You cannot put the question in any other way to an expert witness. If the objection is that it is leading, I can't tip it end to end, and put it the other way. If the counsel is strenuous as to the precise form of the question—I don't think it would hurt anybody to let it stand.

Mr. PRATT—If the Court please, there is no disposition to be captious at all. I know the integrity of the witness, but I know from experience that any witness naturally embraces the answer that is suggested in the question. No man on the face of this earth has any higher respect for Dr. Shurtliff than I have. It is not on that ground at all.

THE COURT—Read it again, Mr. Barnes, and see if you cannot put it in a form that is not leading.

Mr. BARNES—I don't think I can.

THE COURT—Read it again.

Mr. BARNES—Is it or not known that the cunning of madmen, when bent on a favorite scheme, enables them to practise the utmost self-control, and to conceal the infirmity under which they labor, while engaged in such proceeding?

THE COURT—Answer the question; I overrule the objection.

Mr. PRATT—The reporter will note our exception, please.

WITNESS—I answer, yes.

Mr. BARNES—That is all, sir.

Mr. PRATT—Doctor, if you were called to examine a patient for the purpose of determining his insanity on a particular subject, or with reference to a particular person, and you found that general great eccentricity had pervaded the man's character all through his life, would not your inclination be first to ascertain whether or not that which seemed to be monomania was not in fact a part of his general eccentricity?

A. I should.

Q. The tendency, then, of the two existing together would be as likely to operate in favor of both being eccentricities as in favor of both being insanity?

A. I think it would. That is, while that eccentricity would not go far as an evidence of insanity, although, as I have repeatedly said, it is a predisposing—these eccentricities are evidences of a predisposing cause of insanity, as I have repeated.

Q. But if you found, what appeared to be monomania from casual observation, and at the same time great general eccentricity, it would raise a suspicion in your mind that what seemed to be monomania at first, might be a form of general eccentricity?

A. It would raise a suspicion, and lead me to inquire carefully into that question.

Q. Isn't it a general fact, Doctor, that most great men, men of



fine minds, high intellectual attainments have peculiarities which are called eccentricities?

A. Well, I could not say that it is. There are some particular instances of that kind, but great men, and prominent men's peculiarities are observed more, and importance is attached to them, and they become historical facts. But I am not able to say, that great men, as a general rule, are more eccentric than the common class of men, except in some particular instances which we have of peculiar geniuses.

Q. Well, from that fact, Doctor, of their eccentricities being more regarded, and commented upon, and more importance attached to them, is not the general impression prevalent among people that they are usually eccentric?

A. I am not able to say that that is the case.

[The Court takes a recess until two o'clock P. M.]

#### AFTERNOON.

DR. ASA CLARKE, called for Contestant. Sworn.

*Examined* by MR. BARNES—Q. What is your profession, sir?

A. Physician and surgeon.

Q. How long have you been engaged in the practice of it?

A. Some twenty-three or twenty-four years—twenty-three years.

Q. How long have you resided in this State?

A. I came here in 1849.

Q. Have you during this time devoted yourself to any particular branch of your profession?

A. For some years I have been connected with the State Insane Asylum of California.

Q. How long?

A. A little over ten years.

Q. What is your present connection with it?

A. I am not connected with it at the present time.

Q. How long since?

A. I resigned in August last.

Q. This present year?

A. Yes, sir.

Q. What do you understand by the word insane?

A. I understand, unsoundness of mind.

Q. Is that the general term under which is included all forms of insanity, or unsoundness of mind?

A. Yes, sir.

Q. What do you understand by the term monomania?

A. I understand monomania to refer to those cases where insanity shows itself in one or a few topics, not general, on all points.

Q. Suppose a man to be of unsound mind with respect to some one topic, or set of topics; is that unsoundness or delusion necessarily accompanied by general mental unsoundness?

A. Not by apparent mental unsoundness; not by mental unsoundness that would be generally apparent, at any rate.

Q. May a man entertain delusion upon one subject, or a cognate set of subjects, and yet possess discretion, and reasoning power, and intelligence in respect to others?

A. He may.

Q. Now, if you were called to determine upon the condition of a man's mind with respect to soundness or unsoundness, would you be



governed in determining the question by what appeared in relation to this particular topic or set of topics, or by his ability to transact the ordinary affairs of life?

A. I would be governed by his—if he was evidently insane upon one topic, or set of topics, I should recognize his insanity, although he might be apparently sound in every other respect.

Q. To what extent do you find that self-exaltation, or an undue self-pride, a sense of self-importance, is a characteristic of insanity?

A. A very large part of the insane are affected in that way, and imagine themselves to be some superior being, or endowed with extraordinary powers of some sort.

Q. To what extent does extreme irritability, when contradicted or thwarted at all, exist among the insane?

A. To a very large extent.

Q. Is it an element from which you, as an expert, or in handling and dealing with insane persons, determine the condition of their mind?

A. Frequently.

Q. To what extent does the element of suspicion of other people, and fear of assassination and poison, enter into such cases?

A. A very large number of them are suspicious. We meet them very—except those that are afflicted with certain kinds of organic disease, that are recognizable.

Q. Suppose, Doctor, a case like this. Given a man of good natural powers, developed by education, and trained to one of the learned professions, who has made himself distinguished in public life, by being the author of measures of admitted public usefulness; in private life, a careful, shrewd, and almost penurious man, who has a wife, who through all the years of their connection, has been a faithful, constant and patient companion and helper, enjoying the respect and esteem of every person with whom she is brought in contact, and of entirely blameless life, and, after having enjoyed a pleasant married life for some years, there is developed in him a disposition, which continues with increased force, a causeless suspicion and jealousy and hatred of her, manifested by extreme rudeness toward herself, by unfounded and unreasonable accusations against her chastity; declaring to many person with whom he converses, or by whom she was mentioned, that she had been guilty of the grossest licentiousness; that she had been in the habit of visiting houses of assignation; accusing her of illicit intercourse with a clergyman, who is above suspicion, with whom he was on friendly and intimate terms; accusing her also of illicit intercourse with a gentleman also above suspicion, and at that time, and at all times, his bosom friend; accusing her without foundation, of being a thief and liar, and of teaching her children and his to lie and steal; and of corrupting his children, so that their future life and usefulness was impaired; accusing her to many persons of having formed a deliberate purpose to take his life; of having three times administered poison to him for that purpose; that in constant dread of assassination, he refuses often to allow her to sleep in the same house with him; that for fear of being poisoned, he had the medicine about him poured out of the window after she had been in the room; that he acted upon this delusion, and believed it to be true; goes to the public officials, to obtain the services of detectives, to watch her in her schemes against his life and property, and in her improper intercourse, and employed for this purpose no fewer than

three detectives, and when they, and every one else with whom he converses, says to him that there is no foundation for his suspicion, turn upon them in passion, and saying that they are in league with his wife. Suppose, in addition to this, that even when his wife's name is mentioned, he exhibits the utmost vindictiveness and hatred for her, that his expression of face changes on occasions when he speaks of her, and using in respect to her every species of profane and vulgar language, which he was not in the habit of using in the ordinary circumstances of life. Suppose, too, by reason of his fear of her, he deprives himself of necessary food in his own house, and solicits the charities of his neighbors. Add to this, that during his last sickness, he is often found wanting in the ordinary modesty, and regardless of the decencies of life. Add to this, a habitual indecency of manner and demeanor toward his wife, when she comes near him. Add to this, the delusion, absolutely without foundation, that his wife is the mother of her reputed niece, and repeatedly asserting that his wife is her mother; arguing, when conversed with on that subject, that she was the mother of her niece, from the fact that she has great affection for her. Add to this, that in accusing his wife, he accuses of being the father of his daughter, one of the gentlemen to which I have referred, and that, notwithstanding these charges with respect to his daughter, he was at all times particularly fond and proud of her; that the hatred for his wife increases in intensity, until he cannot bear to see her, or to speak to her; that whenever reason fails to convince him upon these points of error of judgment, he declares that his friends are in league with his wife; and that this state of facts continues for a series of years, accompanied by other extraordinary conduct. What would you say was the condition of that man's mind, and to what grade of insanity, if any, would you assign his case?

A. I should say he was an insane man.

Q. To what grade of insanity would you assign it?

A. He would be what is called generally a monomaniac.

Q. Add to this statement which I have made, that during much of the time covered by these acts, he was suffering from a tubercular disease of the lungs, of which he finally died. Coupling that fact with the others I have named, to what peculiar form, if any, would you assign his insanity?

A. Well, he would be one of those suspicious lunatics, probably. It is called monomania of suspicion, I believe; or something of that kind.

Q. Is there any form of insanity that develops itself in connection with tubercular disease, or what we call consumption?

A. It is very likely to take that form.

Q. What is that form of insanity called?

A. Phthisical insanity.

Q. Is that a well known form of disease?

A. Insanity of tuberculosis.

Q. What are the characteristics of that class of insanity? How does it manifest itself, generally speaking?

A. They are more irritable, suspicious than sane persons generally; apprehensive that some one will injure them some way; poison or assassinate them.

Q. Now with reference to cases of dementia, that is, outside of the cases where there is entire destruction of mental power, and the

patient becomes what we term in common parlance, a raving maniac, or a lunatic; what is the true test of insanity?

A. Well, a delusion is—if a man believes in a state of things that don't exist, a belief that cannot be removed by evidence, he is an insane man.

Q. Might not a man be insane in such a condition, and upon the subject or class of subjects concerning which he is deluded, while on other subjects he is reasonable and acts and speaks like a rational being?

A. Yes, sir.

Q. If you found a man under mental delusion, believing in facts that had no existence except in his own imagination, and persists in believing them against all evidence to the contrary, and against all probability, and acts upon such belief, would your opinion as to his mental delusion be affected, though he were able on other subjects to speak and act as men naturally and reasonably do?

A. No, sir; it would not.

Q. Then in such cases, the element of his being able, and in point of fact, acting rationally and reasonably on other subjects disconnected with this particular subject, would cut any figure in determining whether he was insane or not, would it?

A. Not if he was clearly insane on some.

Q. Have you ever known any cases of insane delusion, where the delusion founds itself originally on some slight circumstance, and where the insanity consists in magnifying this slight circumstance, or set of circumstances, beyond all reasonable bounds?

A. Well, I can't call to mind any person exactly, that that case would cover, under my own observation.

Q. How is it in the books?

A. The books describe such cases.

Q. Are there not such cases known?

A. Yes, sir; there are.

Q. To any considerable extent?

A. I think probably there are.

Q. Suppose you found a man having a defective eye-sight, simply a defect of the eye-sight, and which very slightly affects his usual power yet he believes himself to be totally blind, and acts as blind men do, refusing to walk without assistance, and pretending that he can neither see, nor read, nor observe anything, while at the same time his eye-sight is sufficient for all business purposes, is not this as perfect a state of mental delusion as if nothing were the matter with his eyes?

A. It is.

Q. Take the case which I put to Dr. Shurtliff, of the proprietor of a large domain, who loses a very small portion of it by some mischance, and it produces such an effect upon his mind, that he convinces himself that he has been deprived of the whole of it, and persists in that conclusion, in spite of argument and evidence to the contrary, not only so, but suffering that conviction to poison, and preclude the enjoyment of the ample portion that still remains to him, during and throughout the rest of his life. Is not such a man—is not this essentially as insane a delusion on his part, as if he were still in the possession of every acre of his original domain?

A. Yes, sir.

Q. To what extent have you observed that men of unsound mind are capable of self-control, if they wish to exert it?

A. To a very considerable extent—I very frequently see such cases.

Q. Have you ever known, in your own experience, cases of mad men, whose cunning, when bent on the accomplishment of a favorite scheme, has enabled them to practice the utmost self-control, and to conceal the infirmity under which they labor, while they are accomplishing that object?

A. Yes, sir; I have known such cases frequently.

*Cross-Examination, by MR. PRATT.*—Q. You say that books describe cases where the delusion begins about some, very trivial matter. Is not that, in fact, as often the case, as it is otherwise?

A. Well, it might commence about some trivial matter, the apparent delusion—it is likely to be some matter of importance, perhaps.

Q. Is it not, in fact, a characteristic of insanity, as often as otherwise, that the malady grows and increases, or is not that the case in almost all of what you call the incurables?

A. Well, the incurables in the first place, are usually acute cases; they become incurable after a length of time, and are not incurable when first attacked.

Q. What proportion of cases of insanity are incurable?

A. Oh, probably one half.

Q. Now, in what proportion of the incurables, does the insanity, after it has once developed itself, so as to be recognized as insanity—delusion—continue to increase?

A. Well, frequently after a time, they become demented—approach dementia—insanity. It very frequently comes, that the disease is quite as apparent in the first outbreak as it is at any time.

Q. It is as apparent, or else it could not be recognized as insanity—but what I mean to say is, in what proportion of cases does the disease continue to grow violent, and more fully and markedly developed—whether it ends in dementia, or anything else, I don't care. What I want to get is, in what proportion of incurables the disease goes on from its first development to the worst stage?

A. Well, in those cases that commence with eccentricities, a very eccentric man becomes more and more so, until he is finally, plainly, palpably insane; but in that case it generally increases gradually in that way.

Q. How is it with other cases, where there has been a general eccentricity, but there is no sudden change, or development of the delusion? In what proportion of cases does the form increase—does the malady grow more intense, more marked, more general, more fully developed?

A. Well, in acute cases; cases that commence, of course, in mania, the disease is about as apparent then as at any other time.

Q. In cases of acute mania, the disease is generally as bad on its first inception as at any other time?

A. When it first becomes apparent, it frequently is.

Q. What proportion of the insane are cases of acute mania?

A. A very large proportion at first. When they first come under the notice, I mean, of the management of an insane asylum.

Q. A large proportion, when they first come under the observation of the professors in the insane asylum?

A. Of those having charge of an insane asylum.

Q. Well, are you competent to speak of the other cases that do not come under the observation of professors in the insane asylum?

A. Well, I suppose I am; I think I am.

Q. What proportion of those are as bad when it first develops itself as at any period after that?

A. I should think a small proportion.

Q. What is the fact generally in that respect, as to what you would call the curables, the other half of the insane world—does their disease usually develop itself after its first inception; or, is it as bad at first, ordinarily, as it is in later years?

A. The curables—the disease generally develops itself more rapidly.

Q. It goes on from its first inception until it attains its climax, and then the cure commences?

A. The cure either commences, or they fall. Yes, when it runs on for a length of time form an acute mania, until it finally terminates in recovery or dementia.

Q. If it terminated in dementia, you would not call them curable?

A. No, sir.

Q. Then it goes on until the cure commences—those who are curable?

A. Yes, sir.

Q. • You replied to Mr. Barnes, that if a patient was evidently insane on one subject, or class of subjects, you should recognize his insanity, though sound in every other respect. But what I want to get at is, in determining the question whether he is clearly insane on one subject, or not? How far would the condition, his mental condition in regard to other matters, enter into your estimate? What weight would you give it?

A. Well, of course if a man should come in contact with an individual who was seeming perfectly straight and sane on every subject, and suddenly apparently insane on others, he would require to be fully satisfied, and have to see the demonstration of insanity to that extent to satisfy his mind. It would take evidence to convince me of the insanity of the individual—that, is the man's conduct in some particulars, would have to be that of an insane person.

Q. If then, you were called to examine a patient who was suspected of being a monomaniac, being insane on one subject, you would want to know something about the antecedents of the patient, his mode of conversation by which that delusion had been produced, before you could determine whether it was monomania or not?

A. Well, a thing might be so palpable as to be conclusive without any history of the case.

Q. Well, what conclusive cases are those? Give an illustration of that class of cases in which the monomania is so palpable that you don't seek any further knowledge or information about the patient except to observe the single delusion?

A. Well, a man who should represent himself as being something else than a man, for instance, some other sort of being, I should think that would be sufficient, anything of that sort.

Q. And he believed that?

A. And he believed it.

Q. And was sincere in it, you would pronounce him a monomaniac?

A. Yes, sir.

Q. Is not that, Doctor, the only class of cases in which the existence of monomania can be determined upon a single fact? When I



say the only class of cases, I mean, is it not limited to that class, while the delusion is in itself something irrational and impossible, and not depending upon ordinary evidence?

A. Ask that again.

Q. Would the evidence of a single deluded opinion convince you that the man was a monomaniac, without further inquiry, unless that delusion was irrational and impossible in itself, and where it could not be removed by evidence?

A. It would take something of that kind. If a man depended upon one single expression, you would want something of a marked character to determine that the man was insane.

Q. Well, suppose, then, take the case—I will put it outside of this case. Suppose a man has the idea that the police are after him to arrest him for an act of fraud or crime. There is a thing that is not irrational or impossible, but it a question of evidence whether they are or not; would you then, from the mere fact that the man had that idea—there being in fact no existence of it, but some evidence tending to show it—pronounce him insane?

A. If he had not considerable amount of evidence tending to show it, I should not.

Q. Suppose the evidence was exceedingly slight, and he was a man naturally suspicious, cautious and timid?

A. If the evidence was exceedingly slight, I should presume he was insane.

Q. You would presume he was insane?

A. If the evidence was exceedingly slight, yes, sir.

Q. Regardless of his temperament and organization in all other respects; those facts standing alone—that he thought the police were after him, and the evidence of that fact were exceedingly slight, you would pronounce him insane without further inquiry?

A. No, sir; I should not. I should of course make further inquiry before I should pronounce him insane; but that would be very strong evidence that he was insane, if he was suspecting a thing of that sort and had no ordinary amount of evidence to support his suspicion.

Q. Suppose some man of ordinary character and understanding in the community had informed him—some man of ordinary character and integrity informed him that the police were in pursuit of him, and from that information alone, without further inquiry, he believes and accepts that as being true; would you consider that any evidence at all of his insanity?

A. No, sir; I don't know as I should.

Q. You say that the idea of self-importance prevails among a very large proportion of the insane. You include in that class those who imagine themselves to be some other beings; I suppose Napoleon Bonaparte, or the Queen of England?

A. Exalted notions of that sort; yes, sir.

Q. Now, does ordinary exaggeration of the abilities which the parties really possess prevail among the insane to any larger extent than those who are not insane. I reject now this class of insane, who suppose themselves some other being, Louis Napoleon, or somebody else, but they have certain faculties and beliefs, does an exaggerated idea of those abilities which they do possess, prevail to any greater extent among the insane than among those who are called sane and run at large anyhow, whether they are or not.



A. Well, I don't know that it does, probably to a larger extent, but mostly those that have those exalted notions, go beyond that.

Q. It is not only an exaggeration, but a delusion—they think they are somebody else, something entirely different from what they are?

A. Yes, sir.

Q. And then there is this difference, that among people that are permitted to go at large, on the basis that they are not insane, their modesty and sense of propriety often restrains them, and yet the idea of their self-importance may still exist in the same degree as in the insane. That is true, is it not?

A. I presume—well, I don't know how that is, I am sure.

Q. This idea of exaggeration then, of the abilities which they do possess, standing alone without any other leading or marked symptom of insanity, would weigh nothing at all in the diagnosis of mental disease, would it?

A. Well, it would depend upon the degree of exaggeration, I should think.

Q. Suppose it is merely an exaggeration of qualities which they do possess—no delusion about it except an exaggerated idea of their abilities in a particular line.

A. If the exaggeration is not too great an extent, it would not be any evidence of insanity.

Q. You also stated, Doctor, that extreme irritability prevails in a large proportion of cases in insanity, in about what proportion, do you judge?

A. Those who are suffering from organic disease are usually more or less irritable.

Q. Take those who are suffering from organic disease, and who are not in the insane asylum, who are not insane; take consumptives, what proportion of men who are slowly wasting away and dying of consumption, in the last stage of the disease, what proportion of such are extremely irritable and nervous?

A. Whose mind is not impaired?

Q. Yes, sir; whose intellectual faculties are not impaired?

A. I think not a very large proportion.

Q. As large as among the insane?

A. No, sir.

Q. Is not that one of the symptoms and one of the peculiar effects of chronic consumption, doctor—extreme irritability and nervousness, and sensitiveness to change of climate, heat and cold?

A. Yes, sir; sensitiveness to changes of climate and all that sort of thing; but that is a different thing from what we are speaking of.

Q. Don't they, as the flesh wastes away, and nothing is left but bones, and the organization and brain, don't they almost always, if enfeebled, become exceedingly sensitive and irritable?

A. I am not prepared to say that they are exceedingly irritable.

Q. Do they become exceedingly sensitive to climatic influence, changes in the atmosphere, noises.

A. They are liable to be affected in that way.

Q. Impatient of opposition—controversy.

A. I think consumptives are not so much that way, as many other persons affected with other diseases.

Q. Have you had much experience in the treatment of consumptives?

A. Aside from in the asylum, I can't say that I have had a large experience.

Q. What proportion of your insane patients in the asylum are consumptive?

A. I suppose that nearly one fourth of them die of consumption—that die, I mean.

Q. And in all those cases there you find this extreme irritability?

A. I should not say all; but in a large portion of them.

Q. Then let me ask you, doctor, what this extreme state of irritability would weigh in your mind as evidence of insanity, in the absence of any other leading marked symptom of insanity?

A. Do you mean in a consumptive?

Q. In any one where you find nothing but an extreme state of irritability; no other marked or leading trait of insanity. Would that single symptom alone be an evidence?

A. It would depend upon a man's natural disposition, to a certain extent.

Q. Then you would it necessary in that case, before pronouncing the patient insane, to know what his natural disposition was.

A. If a man is naturally irritable, and has been all his life, of course.

Q. When did this new classification of insanity first present itself—mania of tuberculosis? Is not that a modern invention?

A. No, sir; it is not a modern invention. I think it has been recognized a long time.

Q. How long?

A. I don't know how long.

Q. A quarter of a century?

A. I should presume so.

Q. When did you first learn of it? When was it first brought to your attention particularly?

A. I presume I learned it as soon as I began to learn anything about insanity.

Q. You recognize that as one of the forms of monomania, do you?

A. Yes, sir—perhaps there is a little error in regard to that point. I think that that classification was not recognized as far back as that.

Q. Approximate the period as near as you can when it was, Doctor, according to the best of your judgment and recollection?

A. I am not able to state the precise time, or I don't know that I can say particularly now, when that was noticed first.

Q. Was it ten years ago?

A. I presume it was more than that.

Q. Let me ask you this general question on that subject: Has it been known and recognized so long that its peculiarities are as well understood and as clearly defined, and as readily recognized in your profession as are the other forms of monomania? Are you as familiar and as thoroughly conversant with that as with other forms of monomania?

A. Yes, sir; I am, I think.

Q. Now, in what proportion of the persons afflicted with that monomania are all the intellectual faculties involved and disturbed?

A. I don't know that in any proportion of monomania cases, all the intellectual faculties are apparently involved and disturbed.

Q. In monomania all the intellectual faculties are apparently involved?

A. I didn't say that, sir; I said they were not.

Q. I supposed that is what you meant to say; I didn't understand you. Is there any greater or less proportion of the cases of insanity of suspicion as you call it, which effect all the intellectual faculties than in any other particular forms of monomania? Is there any difference in that respect? Does it stand on the same basis with the other forms of monomania?

A. I do not understand the question.

Q. You say the disturbance of all the intellectual faculties is not always involved in monomania?

A. Yes, sir; I say the disturbance is of all the intellectual faculties. There may be some that are not apparently disturbed in monomania.

Q. Is the intellect disturbed in a larger or smaller proportion of the cases of insanity of suspicion than any other cases of monomania, or are the different classes of monomania the same in that respect.

A. You asked me if all the intellectual faculties are disturbed in monomania?

Q. Yes, sir.

A. Well, I say they are not.

Q. Now, there are different classes of monomania, one of which is the mania of tuberculosis, as you call it; or of the insanity of suspicion. In that class of the cases are all the intellectual faculties more likely to be disturbed than in other classes of monomania, or less likely?

A. I don't know that they are more likely.

Q. Sir?

A. A person afflicted with monomania, I suppose, has a number of faculties or traits of mind that are supposed only to be disturbed generally. It would not be called monomania if the disturbance of the whole mind was apparent; it would not be monomania, it would be insanity.

Q. So far as the intellectual faculties are involved there is no difference between monomania of tuberculosis and the other forms of monomania? It stands on the same footing with other forms of monomania, it involves the intellectual faculties to no greater and no less degree? That is the idea I want to get, whether that be true or not. I will ask you this to put you on the track: Is it not generally the case that in mania of tuberculosis the intellectual faculties are not involved at all?

A. No, sir; I think not; I don't think it is. They generally labor under some delusion—frequently do, and if they have intellectual delusion, of course, their intellect is disturbed.

Q. In what proportion of those cases are the intellectual faculties disturbed?

A. What cases?

Q. Mania of tuberculosis?

A. Well, they would more likely be in monomania—a species of monomania than some other.

Q. I assume that it was monomania; but monomania you say does not necessarily involve all the intellectual faculties, then I ask you what proportion of the mania of tuberculosis does involve all the intellectual faculties, or I will ask you this: Did you ever know a case of mania of tuberculosis purely, that involved or in which there was a disturbance of all the intellectual faculties?

A. All the tuberculosis insane that I have been acquainted with, although they had suspicious traits of character in most cases, their mind has been afflicted generally, but it shows itself more particularly in that way.

Q. What do you mean by saying that the mind is afflicted generally, that the brain is debilitated and the mind weakened and less active and less vigorous.

A. It may be that way, or it may be excited in some way. It would be disturbed one way or the other, I think, generally.

Q. The mind generally would be disturbed, one way or the other. Now, doctor, is not this the true test to distinguish between monomania and mere error of opinion, or judgment, or belief, that where the opinion is irrational in itself, as that a man should believe himself his own father, a thing which is impossible; or, that he could lift this building, a thing which is also absurd and capable of demonstration, that you would pronounce him insane without further inquiry; but if the erroneous opinion was a conclusion not irrational in itself, but depending upon a train of facts and circumstances, and the evidence of them a simple and unreasonable conclusion, and against the weight of evidence, wouldn't you be obliged to know all the accompaniments and circumstances, and the antecedents of the patient, to determine positively the question of insanity?

A. If there was any degree of probability in the state of things supposed by the person, it would depend—

Q. What standard would you set up for the patient? Would you judge for yourself, and if he did not believe as you believed upon a given state of facts, would you, therefore, pronounce him a monomaniac?

A. It would depend upon what the state of the facts was.

Q. It would depend upon what the state of facts was. You cannot designate any degree of improbability in the existence of the fact upon which you would say it was insanity?

A. Well, if a man should make a statement which I knew very well could have no foundation whatever, that he would have no evidence to set up a belief, in a state of things that were entirely improbable and absurd, I should suspect and suppose insanity.

Q. Even upon that would you pronounce him insane, without knowing something more about the patient but the fact that he did believe that unreasonable thing?

A. I should inquire thoroughly into the man's history if I had an opportunity, before I said anything about insanity. I might probably make up my mind on one or two points, and come to a conclusion.

Q. A mere error of opinion or belief, which is dependent upon facts and reasoning, without any marked or leading symptoms of insanity, would not be sufficient to pronounce him insane?

A. If there was any evidence, any reasonable amount of evidence, to support this error.

Q. If there was any reasonable evidence at all in support of his opinion, would not you be obliged, would not you feel obliged to make a thorough analysis of the man's character, and know his antecedents of this belief, before pronouncing him insane?

A. Suppose you give me an illustration of the character of belief he entertains.

Q. Well, I gave you one awhile ago, in which one man informs

another that the police are in pursuit of him, and he immediately adopts that belief, and acts upon it without further investigation.

A. If he is told by a man whom he believes to be a reliable, good man, and a man he thinks would not lie, and if he is naturally of a suspicious temper, of course he would be justified in paying some regard to what the man said to him, and suspecting there may be something wrong.

Q. You would not pronounce him insane upon that?

A. Not upon that only.

Q. Now, suppose the man has in fact committed a crime, and he sees a policeman hanging about his place occasionally, and upon that he should suspect he was after him, and act upon that belief?

A. And go away? I should think he was not insane upon that. If he acted upon a belief, if he believed that the policeman was after him—knowing that he had committed a crime, I should not think that that was any evidence of insanity.

Q. Take the case of the Mormons, who believe in the divine inspiration of Brigham Young, that he is the prophet of the Almighty, and believe in all the absurd doctrines and notions of the Mormon church without any evidence whatever. Are they insane?

A. Well, they think they have evidence; they have the evidence of their teachers, and they are not insane; no, sir.

Q. Don't you think from your own standpoint that that evidence is extremely ridiculous?

A. It would not be worth anything to me.

Q. You would not believe it, nor attach any importance to it at all?

A. No, sir.

Q. But they do believe it?

A. Yes, sir.

Q. And act upon it?

A. Yes, sir; because they have been taught that way. They think they have evidence.

Q. Would you then from that fact pronounce them insane?

A. I should not at all, sir.

Q. There is the case, then, where there is nothing which to your mind is any evidence whatever, and yet they believe the fact, and you do not pronounce them insane?

A. I have not the evidence. I do not know what they are taught exactly, or the way they are taught. If I had been raised a Mormon perhaps I should think as they do.

Q. I will ask your opinion on this case, Doctor: A person believes himself to be the Incarnate Son of God in one instance. We find that the individual has for years before the avowal studied and interpreted the Scriptures in a mystical manner, and, although a clergyman, his judgment relating to matters of theology has always been of a most weak and errant kind; that in consequence of his want of common sense and judgment, and the vagaries of his personal vanity, he has lost all chance of preferment in the regular course of his profession. As the world rejects him, he redoubles his mysticism, vanity and spiritual pretensions, and persuades some of the washy-minded people to believe in him and to confer upon him the adulations as the impersonation of God upon earth. Would you pronounce that a case of insanity upon those facts?

A. Alone?

MR. BARNES—I object to that. This must stop somewhere. It is irrelevant and immaterial and not founded upon any fact in this case, not cross-examination, and not tending to throw any light upon any proposition here at all.

THE COURT—I will allow the question to be put. I overrule the objection.

A. If a man had ever had sufficient mind to receive an education to become a clergyman, although he might have been eccentric, and afterwards adopted an idea that he was the incarnation of God Almighty, I should say he was an insane man.

MR. PRATT—Do you recognize “Bucknell and Tewke on Insanity” as a standard work on that subject?

A. Yes, sir.

Q. Do you recognize the distinction between those cases where the deluded opinion is formed without the exercise of the reasoning faculties at all, and cases where it is the result of reasoning, but reasoning illogically and from false premises?

A. An insane delusion is a delusion that has no basis, in fact, no grounds for entertaining it. If a man is deluded from a train of circumstances and from education, that is quite a different thing.

Q. It is no insane delusion when it is only utterly irrational and absurd; is that the idea?

A. Well, there ought to be a certain degree of probability in any idea that a man entertains.

Q. Is it not sufficient if that degree of probability is exceedingly slight, if the mind then takes hold of them and reasons illogically?

A. Well, an insane mind would.

Q. Do not some sound minds reason illogically?

A. Not in the way that insane minds do.

Q. I suppose not in the same way. Do you recognize the capacity of an insane mind purely, to reason at all?

A. No, sir.

Q. To what extent may an insane mind reason?

A. It would depend on the extent of the insanity, the degree of insanity.

Q. Do you know, Doctor, what is meant in law by *insanity*, the technical meaning?

A. It means a person of unsound mind, as I understand.

Q. You have seen a great many men in your experience, Doctor, whose minds were sound, that is, their intellectual faculties were not disturbed, who were very unreasonable, jealous and suspicious of their wives, have you not? That is to say, they were jealous and suspicious upon grounds which in your judgment would be no evidence at all?

A. I do not know that I have been acquainted with many such persons.

Q. You do not know whether such a state of things can exist?

A. Such a state of things can exist, I have no doubt, but not among my particular acquaintance that I know of.

Q. Is it not one of the direct effects of dyspepsia, to produce a want of confidence and courage, and fear and apprehension of personal danger or trouble—isn't that one of the ordinary symptoms of chronic dyspepsia?

A. Well, dyspepsia produces a condition of melancholy and depression of spirits.



Q. That degree of irritability which has been described to you, and this fear and apprehension and dread of trouble, might exist, I suppose, in a person, and still the mind, when at rest and occupied with other matters, be wholly and entirely unimpaired.

A. If a person entertain a delusion, with regard to being poisoned or assassinated, or anything of that kind, a fixed belief, when there is no ground for it, their mind is not unimpaired; it is impaired.

Q. I did not ask you that question, Doctor. The case has been presented here of extreme irritability and nervousness, breaking out in uncontrollable and ungovernable bursts of passion. Might not that exist, and yet when the temporary passion had subsided, and the mind was called to other matters, the faculties being—

A. Yes, sir; a person might be very passionate, and yet be rational.

Q. Now, suppose the manifestations embraced in the question put to you by Mr. Barnes, only occurred occasionally, and that only during a brief period, while the person was very feeble, physically, and extremely nervous and overburdened with business, an important transaction—would you consider such occasional occurrences decisive evidences of insanity?

A. Well, some of those occurrences could not exist without insanity, I should think.

Q. What is that?

A. Some things referred to in that hypothetical case, would not exist in a sane mind—some of those acts.

Q. What is one of them, which could not exist in a sane mind?

A. Well, I think a sane man would not attempt to disgrace his family and his children, by accusing his wife of all sorts of vice and impropriety, when she was clearly a good woman, and especially charging her with those vices before her children. That is one thing.

Q. You think in a man of violent temper and extreme irritability, feeble, nervous, that those things could not be said in a burst of passion, unless he was insane?

A. I think not. Some of those acts could not be said and done, or would not be.

Q. Would you think it any evidence of insanity, Doctor, that an old man about dying with consumption, his mind occupied with closing up his earthly affairs, should be careless and indifferent about the exposure of his person at times?

A. Well, to some degree he might be without showing decided insanity. He might be careless.

Q. To what degree? Explain as near as you can what you mean by that?

A. Well, I think if a man paid no attention at all to decency—if he paid no attention to the decencies of life, I should think it was a sign of insanity; but if he was simply careless or a little thoughtless in regard to those things, I should not look upon it as evidence of insanity.

Q. Have not you seen a great many men in that condition where you never suspected them of being insane, who were entirely indifferent and careless about the exposure of their person within a few days of death?

A. Within a few days of death? I don't know. A man might be so prostrated by disease as not to be conscious.

Q. But while he retains consciousness?

A. I have seen a person considerable careless and thoughtless in regard to those things when extremely feeble.

Q. Suppose, Doctor, a man has been all his life exceedingly economical, growing more and more so as he grows richer until he becomes extremely parsimonious, denying himself as well as his family the luxuries of life, from the mere love of money, and when sick and dying with the disease before named; having a variable and capricious appetite, he asks the neighbors on a few occasions to bring him food, saying it tasted better than any he could get at home, and his cooks did not suit him and did not know how to please him, would you consider those requests, standing alone, any evidence at all of disordered intellectual faculties?

MR. BARNES—I would like to know if that question is founded upon the fact in the case at all. There is no evidence that he had a variable and capricious appetite at all. On the contrary it was one thing all the time, beef-steak and potatoes.

THE COURT—[After argument.]—I will allow the question.

A. Denying himself the luxuries of life would not amount to much perhaps.

MR. PRATT—Well, finding himself in that situation, no matter from what cause, and he asks the neighbors to bring him food, is that any evidence at all of disordered intellectual faculties, that simple fact alone?

A. That standing alone and I not knowing anything about the circumstances of the case—a sick man asking a neighbor for food probably would not be any evidence of insanity.

Q. Exactly?

A. Without knowing his condition.

Q. Take the case of a man, Doctor, who is exceedingly vain and egotistical, has the most unbounded confidence in his own sagacity and correctness, in all matters impatient of opposition and contradiction, knowing himself to be hated and despised by almost everybody for his meanness; would you consider that fact evidence of insanity, that such a man, when extremely sick, nervous and irritable, should denounce those who disputed with him about a matter concerning which he was exceedingly sensitive, and about which he was confident that he was not mistaken; would it be anything more than a burst of passion? Would it necessarily imply disordered intellectual faculties?

A. A very extremely vain, egotistical man is not likely to tolerate contradiction as well as ordinary persons.

Q. Now, I will ask you as a matter of principle, Doctor, a general question. Can a deluded opinion on one subject alone, unaccompanied by hallucination, be recognized as insanity? Does it necessarily, I mean, constitute insanity?

A. Well, sir, that would depend on the way the delusion came to exist—the deluded opinion.

Q. No matter how it came to exist, if it is a deluded opinion and there is no hallucination connected with it, would it constitute insanity? Wouldn't it be simply an error of judgment, perhaps an absurd and unreasonable one?

A. It might constitute insanity.

Q. Well, you do not regard every error of opinion that is absurd and extreme in your judgment evidence of insanity, do you?

A. No, there are a great many opinions entertained by people that are absurd to my mind, but if they are derived from teaching or any-

thing of that sort—if there is instilled into a person's mind any particular kind of belief, it would not be any indication of insanity perhaps. A person taking up a notion without having been led to it in such a manner—such a notion as that he was a prophet or somebody else, say a prophet, or an angel, or something of that sort, would be evidence of insanity.

Q. Those are extreme cases where the thing is impossible and irrational in itself. Do you confine it to that class of cases?

A. Of course there is a difference between opinion based upon some sort of education or information, from an opinion without any information or education—from ignorance.

Q. I apprehend you could answer the question just as it is put, yes, or no. Do you consider every absurd error of opinion or belief as evidence of insanity?

A. No, sir.

Q. Is it possible, now, Doctor, to determine positively the existence and non-existence of monomania in a majority of cases without attention to the condition of all the mental faculties and the antecedents of the patient?

A. In a majority of cases?

Q. Yes, sir.

A. Yes, sir; it is; those I have observed, at least.

Q. Sir?

A. Those cases that have come under my notice, you can recognize insanity generally without inquiry into the early history or all the circumstances of their life.

Q. Have not all those cases in which you have acted upon that theory been these extreme cases where the delusion was an irrational and impossible one, and the person imagined that he was something or other, or could do something which in its nature was not possible?

A. No, sir.

Q. It is not confined to that class of cases?

A. Not altogether; no, sir.

Q. But it applies to cases where there is merely a deluded opinion?

A. I will give you an instance, if you like, of a case. There was a man in the Asylum who has been a sea captain, a very respectable business-man, and while up in Oregon somewhere, he took a notion that he was a great singer, that he could excel any person in the world singing, and he went around and put up handbills and advertised that he would entertain the people by singing, and he could not sing at all; he was no singer, or, at least, not better than almost any other person.

Q. And that you pronounce monomania upon that fact alone, without any knowledge—

A. Well, I did not say that I would, but I say that is not like the case of a man supposing himself to be an ox, because he might perhaps be a singer, and nobody knew, until he tried the experiment, but what he was.

Q. When you found him insane you did, as a matter of fact, know something about his antecedents, didn't you?

A. I learned something of them, of course, after.

Q. You knew something about the state and condition of his mind and his general intellectual faculties?

A. Yes, sir; I knew something about it after I became acquainted with him. I did not know him before. He was a lunatic when I first saw him.

Q. All the people who are brought to the Asylum, and come under your observation there, have been sent there after an investigation as to their insanity, have they not?

A. Most all of them.

Q. May not all the bursts of passion which have been detailed to you in this case be attributed to a violent and brutal temper, accompanied by low and vulgar instincts, yielded to, given up to through a series of years, as readily as to loss of intellectual faculties? What I mean to say is, might not those conditions produce those bursts of passion without involving necessarily the disturbance of the mental faculties?

A. Do you confine yourself to bursts of passion?

Q. Yes, sir.

A. Well, so far as the bursts of passion are concerned, they do not figure so largely as the other. A man may be extremely violent and irritable in his temper without being insane perhaps as much as an insane man.

Q. Would not a man when in a towering rage, ungovernable passion, be quite apt to say all that appears to have been said in this case, or might he not?

A. I do not think he would.

Q. You do not think in any degree of rage or passion a man would say what is assumed to be said here?

A. I do not think sane men allow themselves to go that far, so far as he did in that way.

Q. What is the recognized distinction between eccentricity and monomania?

A. A monomaniac labors under some insane delusion; an eccentric man does not necessarily.

Q. Isn't it a fact that an eccentric man knows and recognizes his own peculiarities and appreciates them, and still persists in them, while the insane man does not? Is not that the real distinction between the two?

A. No, sir; insane men sometimes are aware that they are insane—aware of their insanity.

Q. That then is not the distinction between eccentricity and insanity?

A. The fact of one recognizing his eccentricities, and the other not?

Q. Yes, sir?

A. No, sir.

Q. Suppose, Doctor, that a will or other instrument was put into your hands, which was exceedingly peculiar and strange in its provisions, but nevertheless it was just such an instrument as might be expected to emanate from the man who wrote it, from his peculiar habits, modes of thought and ideas which he entertained at the time when he was not suspected at all of insanity, would you then look upon the instrument as being the production of an insane man from the mere fact of its strangeness and peculiarity?

A. If I saw evidence of insanity in the will I should look upon it as evidence of an insane mind.

Q. That is what I ask you. Would you or not from those peculiarities pronounce the man insane if it was just such an instrument as his friends who knew him intimately expected him to make—no matter how peculiar it might be or how strange?

A. Well, it would not make any difference to me what his friends expected.

Q. Suppose then it was just such an instrument as would be reasonably expected by any rational being who knew the man while perfectly sane, his habits, his modes of thought and opinion, though even so strange in itself.

A. Well, a document of that sort might contain evidence of insanity itself.

Q. How could you designate it then, if it was very peculiar and remarkable in itself?

A. Well, it might be such a document as would only emanate from an insane mind, I think.

Q. Well, it might be, I admit; but would it be necessarily?

A. If it was a very singular document?

Q. Yes, sir.

A. It might be a very singular document, and yet not be to that degree singular, so as to render it certain.

Q. If it was only singular, but still was just such a document, as would be rationally expected from a man of his habits and thoughts when he was rational and sane, would then the fact of its being strange and peculiar, be evidence of itself?

A. If he was rational and sane, and the document conformed to his kind of mind, and agreed with it, of course then it would show no evidence of insanity—the document would not.

*Re-direct-Examination*, by MR. BARNES.—Q. It is not from one single isolated fact that you determine the state of a man's mind, but taking and contemplating the case altogether, to come to an opinion, is it not?

A. Yes, sir; usually.

Q. But taking all those elements together, that counsel has mentioned to you in the separate questions, putting them altogether, and combining them in one man, what should you say was the condition of that man?

A. Take them altogether, I should say he was insane.

MR. PRATT—That is, assuming that all the facts are true, you would pronounce him insane.

A. Well, mostly true. They might not all be true.

Q. There might be some slight fact involved there not true, and you would still pronounce him insane?

A. Yes, sir.

C. F. BUCKLEY called for Contestants. Sworn.

*Examined* by MR. BARNES—Q. Your profession?

A. I am a physician and surgeon.

Q. Have you ever given special attention to the subject of insanity as a disease?

A. Yes, sir; I have been Superintendant of the largest private hospital in England. I believe it is the largest. There cannot be more than one larger.

Q. Where is that?

A. It is between Manchester and Liverpool—Hadoc Lodge Asylum.

Q. How long were you connected with it?

A. I was there for about two years. I was connected with it for twelve months as sole Superintendent.

Q. Did you hear the definitions given of insanity and monomania here by Doctor Shurtliff and Doctor Clarke?

A. I believe Doctor Shurtliff did not attempt to define it.

Q. I understood him to say by an insane person he meant one with unsoundness of mind, general unsoundness of mind.

A. They mean the same thing; there is no distinction.

Q. How would you define the term insane?

A. I would define it as Dr. Shurtliff—that is, I would not define it at all, because it has never been defined.

Q. What I mean is, is that the general term to cover all species of unsoundness of mind?

A. Certainly; yes.

Q. What do you understand by the term *monomania*?

A. By monomania we generally understand a fixed delusion on any one given subject, or two or three kindred subjects.

Q. Suppose a man's mind to be under an insane delusion with reference to one topic or set of topics, is that delusion necessarily accompanied by general mental unsoundness?

A. No.

Q. Then a man may entertain delusions upon any one subject, or set of subjects, and be in respect to other matters a rational, reasoning creature.

A. Perfectly so, to all appearance.

Q. Now, if you were called to examine a man who was suspected of mental unsoundness, and you found him entertaining an unfounded and irrational delusion upon one set of topics, either connected with himself or with other persons, how far would your opinion as to his condition be affected by the unquestioned evidence that in respect to all matters and in respect to his own business affairs he was able to act rationally and reasonably?

A. His capability of attending to all outside business would have no effect at all in determining my opinion. If I found a fixed delusion I should unhesitatingly pronounce him insane.

Q. To what extent have you found in your experience that self-exaltation and undue self-appreciation is a feature of insane mind?

A. It is a very common feature of insanity. The statistics that have come under my own notice, perhaps, would be rather more than commonly accepted, because the patients belong to the upper circle of society; probably one third of all our patients would have some undue exaltation of themselves; some were descended from John of Gaunt, and some were queens of some unknown territory, etc.

Q. Did you ever find among such patients an undue and exaggerated idea of their own importance and greatness as to what they really had done—in respect to what they really had been engaged in?

A. Oh! yes, sir; very frequently. They have had some patients there that had extraordinary notions of what they had done. For instance, one of our patients had squared the circle, and he proved it by a little diagram of his own, which, of course, satisfied no sane person.

Q. In determining the condition of a man's mind, to what extent is the fact that he manifests extreme, unfounded irritability, and impatience, and passion upon very trivial subjects?

A. Well, I have seen patients in the asylum for that cause alone, or ungovernable passion and irritability—unmeaningly so; but, of



course, combined with something else, such as monomania, that might exist; it would be only an additional evidence of the patient being insane.

Q. To what extent does the fact that a patient has a suspicion of others, of their fidelity to him, of their intention to take his life by poison or assassination, how frequently does that occur, and how important an element is that?

A. If the suspicion is groundless, it would be in itself positive evidence of insanity.

Q. That circumstance alone?

A. That circumstance alone would establish monomania.

Q. The case was put here by counsel on the other side, of a man who was told by another that the police were after him, and acted upon that. Now, let me ask you, suppose a man guiltless of any crime were told by somebody that he was pursued by the police, and that single statement made to him produced such an effect upon his mind that he was for months and years under that impression, continually looking over his shoulder, to see whether he was pursued or not, and flying, secreting himself, while he was guiltless of any offence against the law in any respect, and continued in that mind to the destruction of his own happiness and peace, what would you say with reference to the condition of that man's mind?

A. I should say he labored under monomania.

Q. Would it not be monomania of a marked and distinct kind?

A. Yes, sir.

Q. Clearly marked?

A. Yes, sir.

Q. Did you hear the hypothetical question that I put to the other medical witnesses?

A. Yes, sir.

Q. Did you hear it with sufficient distinctness, so as to be able to answer the question without making me repeat it?

A. I think so. I believe the question was, whether, under that state of circumstances, I would consider the person insane, and if insane, to what class of insanity I would assign him? I should consider a person, attended with all those circumstances, insane beyond a doubt, and I should put the patient in the class of monomaniacs, or delusional insanity.

Q. Apart from cases which are known by the term of dementia—that is, an entire destruction of the reasoning faculty and mind—what, in your opinion, is the true test of insanity?

A. The true test of insanity, I believe, is not defined. I think there is no true test of insanity, because some approach so near—but if one has a fixed delusion, it is a test beyond any doubt at all in the minds of alienists—mad-doctors.

Q. Might not a man be entirely insane on the particular topic, or set of topics, on which he entertains this delusion, while upon other subjects he is reasonable and rational, and acts, and speaks, and thinks like a rational being?

A. Oh, yes; nothing is more common.

Q. Have you ever met in your experience an instance of a monomaniac, having a fixed delusion on some topic, or set of topics, who was able, and did exhibit high mental qualities in respect to everything else?

A. Two very remarkable instances came under my own notice. One was a clergyman, a distinguished author in England on Ancient Theology, who had a constant dread of being poisoned, so much so that we had to use the stomach-pump to feed him with; and on one occasion he asked me to be allowed to preach a sermon to the other patients. I objected at first, but after a while I consented to his doing so upon the condition that the Chaplain should approve of it, and also that he would express no sectarian views; and he promised, and he delivered a sermon, and from that date to this hour, I have never heard a more able and logical sermon.

Q. Yet the delusion was fixed, with reference to that poison, and he had to be fed with a stomach-pump?

A. Yes, sir.

Q. At that very time?

A. Yes, sir.

Q. Can you give me any other illustration of fixed delusion on one subject, accompanied with high mental qualities?

A. Another was a Manchester merchant, a corn merchant, a very prominent man, who escaped from the Chidwell Asylum and went to Manchester, where he borrowed five pounds of an old employee of his; and went to Liverpool and came over to America. His delusion was a sort of homicidal delusion towards his own family. He came over to America and he served through the civil war in the commissary department, served through the whole campaign as a clerk; and after the war was over, returned to England with the same delusion, and he had to be confined in the Asylum immediately, when he came under my care again.

Q. What was the precise character of that delusion?

A. He desired to kill some members of his family.

Q. Did that manifest itself when he was removed from them?

A. I cannot say. He had a desire whenever any of them came to the Asylum in our place—they could not see him, because he became violent and desired to destroy them, and in failing to do so, sometimes endeavored to destroy himself.

Q. Now, when out of their sight, and when they were away, what was his conduct?

A. His conduct then was an intense desire to suicide.

Q. Well, what was the condition of his mental faculties in other respects?

A. Quite sane and reasonable on every subject, except on the valuelessness of living, and the value of life; he thought that all animals, rats, for instance, as compared with human beings, he believed were of the same value—he believed that a rat's life was as valuable as a man's, and it was as great a crime to destroy a rat as a human being, when talked to on that subject; he avoided discussion on it, because he knew, he had cunning enough to know that it was one of the causes of his being detained in the Asylum.

Q. And when talked to about that?

A. He would be rather reticent on the subject.

Q. Are there not many cases of fixed, insane delusion upon one topic, or set of topics, where the delusion founds itself originally upon some little circumstance?

A. Yes, sir.

Q. And where insanity, as such, consists in magnifying that circumstance beyond all reasonable bound.

A. Certainly; yes.

Q. Can you give any illustration of that sort of thing?

A. Yes; I knew a gentleman who had a land suit with an agent of Lord Derby's, and his delusion afterwards was, that Lord Derby robbed him of all his property and land, and everything. Lord Derby's agent, I believe, was successful in obtaining a suit against him—obtaining a verdict against him, and his delusion afterwards was, that Lord Derby had taken all his property, and was also following him up, pursuing him.

Q. What was his real condition in respect to property?

A. As I say, Lord Derby's agent did win some suit against him, not to a great extent.

Q. Apart from that, what was his means?

A. He was an independent man, living on his fortune.

Q. Then that comes up to the case that I put here, as to the proprietor of a domain who had lost a small portion of his property, and became deluded with the idea that he was utterly impoverished?

A. He believed that Lord Derby had taken all he had, and wanted to follow himself up with a view to take his life.

Q. May not this extravagant exaggeration of some small or petty fact or circumstance, as compared with others, be as good in proof of its being an insane delusion, as the taking up anew of some absurd prejudice, which is utterly unfounded in fact, and rests on no basis whatever?

A. I think, yes; monomania arises sometimes from small things, which become exaggerated after a time into insanity.

Q. To what extent does great general eccentricity appear as a coincident to the particular delusion under which the patient labors, or is it any proof of partial insanity where that partial insanity is suspected to exist?

A. It is confirmatory evidence of it merely.

Q. Is it not often the case, that where a man is insane upon some one particular topic he is also merely eccentric in many other particulars?

A. It is very common.

Q. Laying out of view, in this hypothetical case which I put, this conduct of this supposed man, with respect to his wife alone, taking his other acts, such as his failing to supply himself at home with the ordinary necessities and comforts of life for a man of abundant means and in declining health, when those comforts and necessities are essential to him—adding to that, extreme harshness and cruelty to children submitted to his care, unreasonable exactions of anybody with whom he is brought in contact, violent and unreasoning temper upon trivial objects, or contradictions in his own statements, unstable of decision and will as contrasted with a previous state of resolute determination which characterized the greater part of his life, and these phenomena occurring at an apparently recent period, and making him a different man from that he formerly was, leaving out of sight the element as to the wife, what should you say, as a medical man, was the condition of his mind, leaving her out of the case altogether?

A. After these changes occurred?

Q. Yes, sir.

A. If these changes were very marked from what had previously occurred, even without the existence of monomania, I should attribute it to insanity. If they were attendant with monomania, or fixed delu-

sion of some kind, they would be still confirmatory evidence of insanity.

Q. Suppose a case were presented to you, in which a man of large wealth failed and neglected to supply himself with the ordinary comforts and necessities of life, depriving himself of necessary food, and when visited by friends and acquaintance, demand of them repeatedly, that they should bring him food, and lived upon such food, and would not admit people to see him, unless they brought him such things as baked potatoes and bread, and beefsteak—suppose that he was found oftentimes sick and voluntarily alone, driving away everybody from him, and the only food about him being such as was utterly unsuited to a man in his condition. What should you say was the condition of that man's mind?

A. I should say that all these things, if very marked, would be evidence of insanity. Then I say that, I recognize the fact that penurious people often, when extremely mean, do that thing; but I am inclined to think that that extreme penury which some people do display and die in, is more or less in itself a symptom of insanity.

Q. Suppose you had a case presented to you, of a man, whose state of self-exaltation was such, that he said on more than one occasion, frequently when the subject of his greatness and his deeds come up for discussion, that he asserted in language like this, assuming him beforehand to have been a man of culture, of high intellectual powers, and of considerable public usefulness; that his self-exaltation became so great, that he declared himself, to use his own language, that Jesus Christ was a smart man, or that he was a smarter man than Jesus Christ ever was, and that when he alluded to his political or personal troubles, that Jesus Christ was persecuted, and so was he. That when he looked at a paper, and saw a public gathering, like a dinner party, where there were toasts given, and he would say, "Neither Jesus Christ nor I were toasted at that dinner;" that he regarded himself as destined to live forever in the memory of man, and that all that he had done, would make him live longer than the greatest benefactor of the human race. To what extent would these facts affect your mind in determining whether that self-exaltation was mere ordinary conceit, or overbearing vanity, or an insane delusion?

A. I could not determine that answer.

Q. What other element would you want to enable you to determine whether he was self-deluded, or was simply expressing a disgusting vanity?

A. If that had been a remark which, from his previous character, if it were inconsistent with his general training, so to speak, then I should say that it was an insane delusion. If he had been brought up to regard Jesus Christ as an ordinary man, and if he considered himself a very great personage, on his expressing that view of it, I should not attribute it to insanity. If that was a marked change from his previous character, I should attribute it to insanity.

Q. Are there not many insane men who are capable of exercising a great degree of self-control on a subject on which they are insane, when they want to do it?

A. Some of them have quite intelligence enough to know that they are in the asylum for special reasons, and very often it requires a great deal of tact to make them introduce that subject. I have seen patients ordered to be sent away by the Commissioners in Lunacy, in England, who are always selected for their superior knowledge of a

subject; and five minutes afterwards, to the attendance of some one else display the most marked insanity, but while talking to the Commissioners they would show no symptom at all of it.

Q. Is it not frequently the case, that the cunning of an insane person, when bent on some favorite scheme, enables him to practise the utmost self-control, and to conceal the infirmity under which he labors, while he was endeavoring to accomplish his design, whatever it is.

A. That is very common indeed; that is very common.

*Cross-examination by Mr. PRATT.*—Q. You said in reply to Mr. Barnes, that if you found a fixed delusion on one subject, you would pronounce the person insane, though he was competent and rational on all other subjects?

A. Certainly; yes, sir,

Q. The question which we want you to answer is this: Suppose you were called to examine a patient who is suspected of being a monomaniac, for the purpose then of determining the question whether he had a fixed delusion or not, would not you feel obliged to ascertain something about his antecedents?

A. No, not at all.

Q. The condition of his mind in other respects?

A. If the delusion was fixed, there would be no occasion at all to revert to his previous history, in the least.

Q. No, but for the purpose of determining precedent question—of course, after you have determined that there is a fixed delusion—but that is the very question you are to decide, whether there is a fixed delusion or not?

A. If the delusion is of such a character as beyond human probability, then there is no occasion at all to revert to his history previously. If it is a delusion dependent on some human probability, a thing that other people may suffer from, or that might occur to other people, and not to him particularly, then it would be necessary to know his previous state of mind.

Q. That is precisely what I supposed you mean. If the idea which he entertained was a mere question of evidence, dependent upon a variety of facts, some of which might present themselves to one mind with one degree of force, and to another with a different degree of force, all to be weighed and the conclusion arrived at; if the delusion was of that character, you would feel it necessary to make a more careful examination?

A. Yes.

Q. Then you would want to know something about the general state of the intellectual faculties, and the accompaniments of this delusion and the antecedents of the patient?

A. I do not quite understand you.

Q. That is, where the question was doubtful in your mind whether it was a fixed delusion or not, and you had considerable trouble in determining it?

A. Yes.

Q. It is not a clear case altogether; the delusion is not in itself irrational and impossible, but it is on a thing that may exist reasonably, then you would want to know something about the antecedents of the patient, and the accompaniments of this delusion?

A. Yes.

Q. You said to Mr. Barnes, that undue exaltation, self-exaltation



was one of the ordinary and common symptoms of insanity. Of course you do not mean to say by that that all persons who are unduly exalted in their own estimation are insane?

A. No, I don't think so at all.

Q. But that it is a common symptom with those who are in fact insane?

A. Yes; but the insane are much more likely to express it than ordinary people.

Q. But when you say that it is a very common symptom of insanity, you say it with reference, among other things, to the fact that a great many persons think they are somebody else; that they are kings, or queens, or emperors, or great authors, or poets?

A. No, it don't necessarily follow that they consider themselves any other person.

Q. No, sir; but when you say generally that that is a common symptom of insanity, you say it also with reference to those facts as well?

A. Yes, certainly; that delusion is very frequent; it is very common. But then there are exaltations without being delusions, that accompany insanity very commonly.

Q. Now, take a case where there is no such marked delusion as that, a rational thing, but the person possesses certain qualities; for instance, he is a tolerably good mathematician, and he imagines himself the greatest mathematician in the world; there is a case of undue exaltation of a faculty he really does possess in a tolerable degree—do you find this exaltation of faculties they do possess to a tolerable degree, any more frequent among insane than those who run at large.

A. I think the insane are more apt to carry it to excess. For instance, that man whom I spoke of that could square the circle, he was a good mathematician.

Q. That was a case where the idea was irrational and absurd in itself?

A. Yes; but still there have been some people who have not been in asylums that studied that for a length of time.

Q. But as you remarked, people, who are in fact insane, are a great deal more apt to expose this faculty or quality than those whose modesty in the world keeps them on their good behavior?

A. It is much more common to desire to appear great.

Q. Can you say, then, in view of all the circumstances, that in fact, an undue exaltation of qualities which the patient does actually possess in some degree, is more common among the insane than it is among people at large?

A. I think the undue expression of it is more common among the insane.

Q. But it may, in fact, exist among people at large as among the insane?

A. I fancy it may do; it may be about the same.

Q. In regard to irritability, you said that irritability is a common symptom of insanity. You do not mean to say by that, that all irritable persons are insane necessarily?

A. No; but undue irritability, and frequent bursts of it are sufficient to keep people in the asylum who once enter there.

Q. Now take the general average of insane patients, and then take the general average of persons who are dying from chronic consumption and dyspepsia, is that extreme irritability more frequent in insane



patients than it is in dying consumptives and dyspeptics who are not insane?

A. Well, my experience in the asylum would lead me to think that it was more common among the insane, because my experience among the insane, dying from phthisis, is, that they are calm and resigned.

Q. Has your experience of consumptives been as extensive as among insane? Have you had as many consumptives under your care who were rational as you have had insane?

A. Oh, a great deal more.

Q. About what was the number of insane in this asylum?

A. The average was two hundred and thirty to two hundred and forty.

Q. And you have treated more of the consumptives who were rational than you have of absolutely insane patients?

A. More consumptives who were rational, than those who were insane.

Q. No. Have you treated more consumptives who were rational than you have insane patients, whether the insane were consumptives or anything else?

A. I should say I have; about three times as many.

Q. Three times as many consumptives as insane patients?

A. Yes, sir.

Q. How long were you in the asylum, Doctor?

A. I was there two years.

Q. During that time, how many patients came under your attention there, different patients?

A. Probably not more than three hundred altogether.

Q. Then you mean to say, that while you have treated three hundred insane patients, you have treated nine hundred consumptives who were not insane?

A. I think I have, at a rough estimate. I have been resident surgeon in a hospital in Liverpool, where we had about twenty thousand patients a year passing under our hands, and I think that at the very least calculation, nine hundred of those must have been consumptives.

Q. In that way, that might readily occur, twenty thousand patients a year passing through the hospital. You said that suspicion, fear, etc., was also a symptom of insanity?

A. That undue suspicion is, yes, sir.

Q. But you do not mean to say that all persons who are, in your judgment, unduly suspicious, or cautious, or timid, are necessarily insane?

A. I think unduly suspicious people are insane; unduly cautious people, I should not say were insane, but persons having more than the proper amount of caution, or even more than was necessary, may not be considered insane.

Q. Explain what you mean by the term "unduly suspicious," You say that undue suspicion is an evidence of insanity.

A. People who are suspicious without any just cause for being so, without cause, that would appear to my mind sufficient to warrant that suspicion.

Q. Without any cause that would appear to ordinary minds, to warrant such suspicion?

A. Yes.

Q. But then, in that case, in establishing that judgment, of course, you determined upon your own judgment, what would be sufficient ground for suspicion?

A. No, I would not.

Q. By what then? By what standard?

A. By the ordinary average judgment of people. Some people might be braver than others, and not care a fig about danger.

Q. Human minds reason very differently from the same premises, and from the same facts, do they not?

A. I think so. They arrive at different conclusions, at all events.

Q. And it may, I suppose, very well happen that a man who was in the full possession of his intellectual faculties, would be suspicious from circumstances, which, in your judgment, would be no sufficient ground for suspicion?

A. Certainly; yes, sir. Some people might be suspicious on grounds, which might not appear to me to be sufficient to warrant that suspicion.

Q. Very often the suspicion would be the result of a normal condition of the intellectual faculties, only the reasoning would be illogical, and from false premises?

A. I do not quite catch that.

Q. I say then, the suspicion would sometimes exist, where the mind, when the mental faculties were in their normal condition, and it would be the result, not of non-action of the mind, but a want of application of reasoning powers, but from using those powers illogically, and reasoning from false premises, and from giving one fact undue prominence, and not attaching sufficient weight to another fact?

A. I think undue suspicion would not arise under those circumstances. I think unfounded suspicion will not arise from any ordinary train of reasoning.

Q. Minds that are perfectly sound reason very differently from the same facts, and from the same premises, do they not?

A. Yes, sir.

Q. And consequently, they might reach very different conclusions?

A. Yes, sir; certainly.

Q. In the case you gave, in an illustration of the loss of property, you say the party had been sued by Lord Derby, or his agent, and some money or some property had been recovered?

A. Yes. That was the history of the case as presented to us, which usually accompanies the patients sent to private asylums.

Q. Do you know anything about the natural organization and temperament of the individual who was sued?

A. All I know was this: that he appeared to be a man of more than the average intelligence. He had been in different parts of the world, was as sensible and sane a man as any man you would speak to, and enjoyed life as much as most men.

Q. Is it not often the case with men who have the full possession of their intellectual powers, with an extreme sensitiveness about the processes of law, about being sued and prosecuted?

A. I don't know indeed.

Q. You don't know of any such illustration. Very probably some of the jury do. You spoke in some of your illustrations, with reference to religious opinions. The religious convictions of a person are very much a matter of faith and speculation, are they not?

A. Training, I suppose, has a great deal to do with it; the train of thought would have something to do with it, and probably passion has something to do with it.

Q. Is it not very common that when a person takes up some particular religious opinion or conviction and enters into a metaphysical study, and analyzes the whole system of faith and futurity, and devotes a great deal of time and attention to it, that either one of two things will occur; that the judgment will become convinced that he is in error or else that opinion will go on strengthening itself and becoming more and more fixed?

A. Well, the question is a little too comprehensive for me. I cannot understand how any one mind can embrace all systems of religion and study on them accordingly and come to conclusions from the study of all systems of religion.

Q. Then I will not say all systems but merely speak of religion—using it as a generic term?

A. What is the question?

Q. He takes up some peculiar conviction and then enters upon a very close and careful study and analyzation of religion; his whole time and attention becomes occupied with it, perhaps throughout a series of years, and is it not inevitable either that his judgment will become fixed and he will reject the conviction he has taken up, or else it will grow and strengthen and acquire great magnitude and importance?

A. I do not think it will necessarily follow; a man might study on these subjects for years, and be in *statu quo* after he is done.

Q. Might that follow, that undue exaltation about some religious notion?

A. If it is undue exaltation in my opinion; it is insanity.

Q. I will omit the word undue, then. Might not that religious idea or conviction become to be a very prominent and absorbing influence on his mind and still preserve all his reasoning faculties intact?

A. Yes, sir; that might occur.

Q. Now about this matter of extreme penuriousness. Suppose that a man through all of his life where there was any suspicion of taint of insanity, when he was perfectly rational—a man who was extremely fond of money—the height of his ambition has been to acquire a great fortune, and he has devoted his whole energies to that end—he was exceedingly economical at the start and has grown more and more so as he became richer and richer, and at last he becomes so parsimonious that he denies himself the luxuries of life and some of the comforts, what men who live as you and I do would call the comforts of life. That might all exist and the man still preserve unimpaired his reasoning faculties?

A. I think when he carries that to the extent of denying himself the ordinary comforts of life, in my opinion, it becomes insanity.

Q. That that standing alone without other marked or leading symptoms of insanity, would in your judgment be sufficient evidence?

A. It would be very strong evidence of insanity to my mind.

Q. Then you would consider all men who are extremely miserly insane on the subject of money—those who are penurious to the extent of denying themselves the necessary comforts of life; the necessaries of life, and their families the necessaries of life?

A. All such men I should decidedly in my own opinion consider insane.

Q. That is on the basis that this is done habitually, is it not?

A. Yes, sir; of course.

Q. Suppose now, instead of its being habitual with him, it has only occurred with him on a few occasions during the period when the man was prostrated with sickness, weak and feeble, and he had simply asked the neighbors on two or three occasions to bring him food, would you consider that that alone, without other marked and leading indications of insanity, evidence of an unsound mind?

A. Well, it would depend altogether on the conditions in which he was placed. If a man had intimate friends, and had no conveniences for getting things himself, I should say that it would be a perfectly sane act to ask them for necessities, or whatever he thought necessary at the time. But if a man asks persons who were not intimate friends of his, and he had the means of obtaining people to supply him with all those things without putting himself under silly obligation to other people, I think it would be evidence of insanity.

Q. Suppose that he is a man of wealth, and that on two or three occasions, for some reason, no matter what, he has quarreled with his servants, and driven them all out of his house, and he has nobody there to cook for him, and he has nothing to eat, and this request of his is made of persons who have been his intimate friends and associates of the family, would you consider this fact alone of his having made this request of such a person evidence of his insanity?

A. Taken in itself, I would not attach much importance to it one way or the other.

Q. Is the fact that a man is suffering severely from phthisis, extremely nervous, and weak, and irritable, the fact that he is exacting and precise in his requirements of all who are about him in their ordinary transactions, any particular evidence of disordered intellect?

A. Not in itself.

Q. Suppose that an old man in feeble health, extremely delicate, nervous and irritable, has two boys of twelve, thirteen or fourteen years or age occupying the room with him, and these boys are full of fun and frolic—noisy, chasing around, and disobedient in obeying his requirements about their studies and other respects, would you think it evidence of insanity that he sometimes punished them?

A. No, sir.

Mr. BARNES—Well, the question is answered; but if counsel think that is a fair statement of that proposition, I have nothing to say.

Mr. PRATT—Q. You suggested, doctor, if there was a change in the habits of the individual, his temper and disposition, that that would weigh very much with you in making up a diagnosis of his mental condition?

A. Yes, sir; if there was a marked change.

Q. Suppose that all these peculiarities were manifested in the man's conduct naturally, before there was any indication at all of any disease of the mind, and that had gradually grown upon him through a series of years—there had been no marked or sudden change, but only growing more and more prominent, these peculiar qualities, would such a change as that make any material difference in your estimate?

A. Not if his condition then was such as I should regard his insanity. If these eccentricities, if they were exaggerated, then I

should think in any connection that it would be insanity. It would not weigh much in my mind whether it came on gradually or suddenly, because there are many persons in the asylum who simply labor under extreme eccentricity alone.

Q. Suppose a man has been pretty much all his life an irreligious and profane man, exceedingly profane on almost every occasion of any little controversy or opposition, with a strong disposition to be blasphemous even, and the man at the same time has a grim vein of humor in his composition—

MR. BARNES—That is good. I would like to have that taken down for my own accommodation.

MR. PRATT—[Continuing.] Concede all that to be true, and at the same time he is a man of exceeding vanity and egotism, fully confident of his own capacity, and judgment and superiority to other people, and he should make the remark in a chaffing or jesting way, that Jesus Christ was a good man, but he was smarter than Christ, would you consider that expression standing alone, evidence of insanity?

MR. BARNES—I object to that as not a proper statement of that proposition. I object to the question where it says he made the remark in a chaffing or jesting way. The witness who testified to that language, the lady who is here testified without any reference to his grim humor, or his chaffing or his jesting manner; “that he told her to take a book and write down everything he said, and that after his death it would be published, and a hundred years hence it would be read by more people and with greater interest than the sayings of Christ were read,” and that “Christ was a smart man, but he was smarter than Christ every way;” that was the language.

MR. PRATT—I will strike out the word, and put the question this way: Suppose the man has been through a series of years irreligious and exceedingly profane, his ordinary profanity verging upon blasphemy; that he is an extremely egotistical and vain man, unboundedly confident of his own superiority and judgment over the mass of men, and on one occasion he said that Christ was a smart man, but that there had been smarter men than Christ, and that he himself was one of them; would that expression standing alone, without any other remark or leading indication of insanity, be evidence of disordered intellectual faculty?

MR. BARNES—I object to that. That is not the only solitary instance of this being in this particular thing.

MR. PRATT—Very well; I will put in the balance. [Continuing to witness.] And that on another occasion he said that “Christ was persecuted, and so was he;” and on another occasion, when reading the account of the Chinese dinner, he said that this toasting was a curious business; that he never heard of Jesus Christ or Horace Hawes being toasted.

MR. BARNES—And that on another occasion he said that Jesus Christ was the first or the smartest of men, and Bishop Alemany second, and Horace Hawes third.

A. I think if any man of his reputed intelligence had uttered these sayings time after time, as stated here, and persisted in believing in it, apparently believing in it, it would be to me evidence of insanity.

[Here the Court adjourns until to-morrow morning at 10 o'clock.]

## TENTH DAY.

FRIDAY, NOVEMBER 24th, 1871.

DR. BUCKLEY, recalled for further *Cross-Examination*, by MR. PRATT.—Q. When we closed the examination last night, we were on the subject of these expressions, used with reference to Jesus Christ. Suppose the party who made use of those expressions, rejected the Christian belief from early life, was an atheist or infidel, would you then consider the mere use of such expressions in themselves, would they weigh anything in determining his sanity or insanity?

A. The use of all those expressions, considered one with another, in my opinion, would determine his insanity, that is, as I stated here last night, if the man were, as stated here, a man of reputed intelligence.

Q. Suppose a man of reputed intelligence, but a believer in Judaism, would the use of those expressions by such a man, have much weight in determining his sanity or insanity?

A. I think so; I think if he had been an intelligent man, who had been brought up a Jew, he would scarcely, if sane, utter, I believe, those expressions, one after another—I mean taking one with the other.

Q. And you would think the use of those expressions alone some evidence of his insanity?

A. Yes, decidedly.

Q. Would not you think—I am considering always, and taking into account that he believed them—would you not consider it pretty strong evidence of insanity?

A. It would be, yes, sir; to me.

Q. Almost conclusive?

A. Yes, sir.

Q. Something was said yesterday about homicidal insanity. Is not homicidal mania or suicidal insanity purely emotional, that is, a mere perversion of the instinct of self-preservation?

A. Suicidal tendency is an instinct of self-preservation.

Q. Is it not a perversion of the instinct of self-preservation, purely an emotional insanity?

A. Generally, it is.

Q. Would it involve, necessarily, any disorder or derangement of the intellectual faculties?

A. Yes, very commonly it does.

Q. Have you not known cases, and have not cases come under your observation, where there was a strong tendency to suicide, and yet the party resist and reason against it with a great deal of force and vigor?

A. Yes; but I have known the opposite, also.

Q. That is to say, you have known cases where the tendency to suicide was so strong, that the reasoning faculties, though they were exercised, were not powerful enough to control?

A. That is not the opposite proposition. I have known cases where the reasoning faculties were overwhelmed by a desire to commit suicide, and I have known cases also, where the suicidal tendency was more or less founded on groundless reasons, of course.

Q. I will ask you, if the fear, or dread, or apprehension of danger



of poison, or assassination, is not much more suggestive of melancholia than it is of monomania?

A. The desire to commit it?

Q. No. His feeling of fear, dread and apprehension of some danger or evil, is it not more suggestive of melancholia than of monomania?

A. With pure monomania, there is no expression of such fear at all.

Q. With pure monomania, there is no expression of such fear at all?

A. In pure melancholia there is scarcely an expression of any feeling one way or the other. It is a common attendant upon monomania.

Q. Suppose the erroneous opinion entertained by the individual was not an irrational one in itself, but it is within the ordinary range and experience of human life, a conclusion simply dependent upon a variety of facts, facts that are in conflict with one another, would you pronounce the patient insane simply because his conclusion was against the weight of the testimony?

A. If these facts were incoherently joined together, it would be evidence of insanity.

Q. If the facts were incoherently joined together?

A. Yes, sir; one mixed with the other incoherently.

Q. Suppose the facts upon which the opinion were founded, were in themselves rational, cognate and coincident, and the patient simply reached a conclusion which you believed to be against the weight of this testimony. I state that simple proposition?

A. If it was against to some degree—if it was against the ordinary conclusion that might be arrived at, it would be some evidence of insanity, but not conclusive evidence, because, of course, he might arrive at it by a wrong train of reasoning.

Q. Would the simple fact that he arrives at a wrong conclusion, or at a conclusion which was against the weight of testimony—

A. [Interrupting.] If he arrived at a conclusion that was manifestly absurd, grossly absurd, it would be some evidence of insanity.

Q. If he arrived at a conclusion that was grossly and manifestly absurd, it would be evidence of insanity?

A. Yes, sir; to a majority of people.

Q. When the idea of the revolution of the earth around the sun was first advanced by a very celebrated philosopher, that conclusion of his was deemed extremely absurd by the mass of men at that time, wasn't it?

A. I am not aware of that fact.

Q. You don't know that fact. Now, Doctor, are there not many cases where the fact itself which is believed in, is absolutely irrational and impossible, and yet, the belief in it would be no evidence of insanity?

A. Where the fact is impossible?

Q. Yes, sir; absolutely irrational in itself?

A. Then, I think it would be evidence of insanity—a belief in it.

Q. Well, I will put to you the same case that I did to one of the witnesses yesterday, in Bucknill and Tewke, that a clergyman became convinced, and sincerely believed that he was the incarnate Son of

God, that certainly is a conclusion impossible and irrational, is it not?

A. Yes, sir.

Q. Should you pronounce that evidence of insanity?

A. That he was the incarnate Son of God? Decidedly.

Q. Without reference to any other facts? That fact standing alone, upon that fact standing alone, you would pronounce him insane?

A. Well, it would depend on whether he had any other outside circumstances to support that. If he believed absolutely that he was absolutely the Son of God, that is, that he was the impersonation of Jesus Christ, then I should pronounce him insane, beyond hesitation. If he believed he was a new personage, and endowed with the faculties of the Son of God, I should hesitate about it for some time, until it became realized to some extent.

Q. Would your opinion in that respect be changed or modified at all, by the fact, that Bucknill and Tewke, in their treatise on insanity, pronounce it not a case of insanity, or any indication of it?

A. My opinion would be, certainly modified by others, but at the same time, it would not alter my opinion.

Q. It would be modified, but not altered?

A. Certainly.

Q. Is it not a common thing, or a thing of frequent occurrence, for men whose intellectual faculties are in their normal condition, to be extremely suspicious, and jealous of their wives?

A. I am not experienced in that matter, but I have often heard of such cases.

Q. Is it not often the case that men are jealous of their wives on grounds, which, from your judgment, would be no basis whatever for suspicion?

A. I believe that is so, very often.

Q. In giving your testimony, do you keep in mind, or recognize the distinction between an entire want of reason or a total non-action of the intellectual faculties and reasoning, but doing so feebly, illogically and inaccurately?

A. Well, there is scarcely any lunacy in which there is not some exercise of the reason.

Q. Scarcely any lunacy without the exercise of reason?

A. In dementia, when all the intellectual faculties are in abeyance, there is no reasoning, but that is probably the only condition in which there is not some exercise of reason.

Q. You stated yesterday that you had treated a great many consumptives; or, at least, a great many had passed under your observation for treatment?

A. Yes.

Q. Where a consumptive has been accustomed for a long time to raise from the lungs large amounts of matter, and in the last stage of the disease, or when he is very feeble, that stops, is that regarded as a good or bad symptom of the disease?

A. Where that stops?

Q. Yes; he suddenly ceases to raise, after having raised large quantities for months?

A. Well, it depends altogether on the stage of the consumption and the progress it has made.

Q. I stated in the last stage; when he was very feeble, debilitated and near death?

A. It scarcely ever does stop.

Q. If it should stop then?

A. It would probably just before death stop through sheer weakness and exhaustion, the effort of the lungs to cough it up, and then it would probably suffocate him.

Q. Then it would be an indication of the approaching death?

A. Yes.

Q. A bad symptom. When you answered the hypothetical case stated yesterday by Mr. Barnes, I suppose your answer was upon the basis that the acts of the patient, as there recited, were habitual, common?

A. I believe the question involved that.

Q. You so understood it?

MR. BARNES—The language throughout was “frequent.”

MR. PRATT—Suppose, then, that those things of which the complaint was made only occurred occasionally, and in the aggregate only a few days, and all within a period of two or three months, and that they only occurred when the patient was extremely sick, suffering great pain physically, and when the mind was overtasked with vast and complicated schemes, and in the midst of fierce outbursts of passion, and that these outbursts of anger and passion only lasted a few minutes at a time, or an hour occasionally, and the person then became calm and reasonable, and talked rationally on all subjects, would those mere outbursts of passion under such circumstances be very significant of insanity?

A. Do you mean the outbursts of passion by themselves?

Q. Yes, sir.

A. The outbursts of passion would not be at all conclusive evidence of insanity.

Q. They might be as readily ascribed to bad temper, unbridled temper, as disorder of the mental faculties?

A. If they were very excessive, they might be evidence of disordered mental faculties; if they were much beyond what is usually seen in those cases, they might be ascribed to disordered intellect.

Q. Would you consider it any evidence of insanity, standing by itself, that a man in such a situation, when extremely feeble, his mind intently occupied in settling up his worldly affairs, should be very careless and indifferent about the exposure of his person to those who came about him in the sick room?

A. There, again, it would depend on the degree; being merely careless about the exposure of the person would not involve insanity, but there are phases of insanity where there is an actual desire to expose the person.

Q. Suppose that, while he was careless and indifferent in that regard in the presence of nurses and chambermaids, and his wife, it should be found that when men whom he regarded, or persons whom he regarded as of his own social standing, and his equals, were in the room, that he was cautious and careful about it to some degree; would that fact have any weight?

A. That is, simply allowed his person to be exposed in the presence of nurses, and so on?

Q. Yes, sir.

A. It would have some tendency to show imbecility of mind; it would not be conclusive evidence of insanity.

monomania, without attention to the condition of all the mental faculties, and without some knowledge of the antecedents of the patient?

A. It is, particularly.

Q. Is it generally so?

A. Not generally. You have to observe it, but you need not regard commonly—you need not take into account the other qualities of the mind at all. Some monomanias are very demonstrative.

Q. Would your opinion upon that question be modified, if you found that these authors on insanity held exactly the contrary opinion?

A. I should like to hear the question again.

Q. Would your opinion upon that question be modified or altered—

A. [Interrupting.] The other question, I mean.

Q. The question you answered is this: Is it possible to determine reliably, the existence or non-existence of monomania, without attention to the condition of all the mental faculties, and to the antecedents of the patient?

A. I say it is.

Q. Now, I ask you, if your opinion upon that would be modified or altered, if you found that these authors on insanity, hold exactly the opposite opinion?

A. It would not be the least modified, because I have seen that, commonly.

Q. Let me read you two or three passages here. I will ask you then—

MR. BARNES—[Interrupting.] I object to the use of these books. They cannot be read in argument, and the witness cannot testify from books at all. They are not in evidence, and they cannot be used in evidence in any way.

MR. PRATT—I propose to read an extract from the book, and ask the witness whether it is correct. [After argument.] I will hand the book to the witness, and ask him to read the passage for himself, and then state whether from reading that, his opinion is modified.

MR. BARNES—I object to that.

MR. PRATT—I withdraw the question.

Q. What is the distinction between monomania and insanity?

A. Monomania is generally—is always a fixed delusion on some subject, or set of subjects. Moral insanity merely means a perversion of the mental faculties.

Q. Would not the case presented by Mr. Barnes yesterday, in his question, come near being a case of moral insanity, than monomania.

A. There is, in my opinion, decided monomania, and a good deal of moral insanity also, scattered through it.

Q. It would be difficult then, to draw the distinction sometimes, between the two?

A. It is not usually difficult, but they very often run into each other—all cases of insanity do.

Q. Let me ask you to answer my first question. Does the case presented by Mr. Barnes' hypothetical question, come as near a case of moral insanity as monomania? Does it not resemble that as much as monomania?

A. As I said, there is a good dash of moral insanity in it, and there is a good deal of perversion of moral feelings apparently scattered through it; but there is a decided and fixed monomania.

Q. What do you consider the marked distinction between eccentricity and insanity?

Q. And I say that, suppose he was careless in the presence of such persons, but when men of his own social standing and position in life were present, he was very cautious about it, how would you regard it then?

A. I should then regard it as no evidence of insanity.

Q. Is monomania ever a primary form of insanity?

A. It is very common to have it observed first.

Q. It is common to have it observed first. Has not there, in all cases of monomania, however, been a serious disturbance of the emotions?

A. Previous to the monomania?

Q. Yes; before the intellectual disturbance manifests itself?

A. No.

Q. Is that generally the case?

A. That monomania is primary?

Q. No; is it generally the case that there has been a marked disturbance of the emotions before the disturbance of the intellectual faculties is manifested?

A. I think so.

Q. Now, as a matter of principle and theory in insanity, is a deluded opinion on any subject, any one subject, unless accompanied by hallucination, does it constitute insanity?

A. A deluded opinion decidedly does.

Q. Without any hallucination?

A. Without any hallucination.

Q. Would your opinion on that be changed or modified at all, if, upon examination, you found that Bucknell and Tewke entertained exactly the contrary opinion?

A. There might be a mistake in regard to the expression. We might interpret the expression "deluded" differently. What I mean by a deluded opinion is a delusion. If there is simply a mistaken opinion, I should not regard it as insanity. Do they use the expression "deluded opinion"?

Q. Yes, sir.

A. Then we interpret the meaning of "deluded" differently.

Q. Can you define what you mean by a deluded opinion?

A. What I mean by a deluded opinion is, a delusion.

Q. What you mean by delusion is a deluded opinion?

A. Yes, exactly.

Q. Is that the extent of the distinction to be given?

A. I mean, one just replaces the other. That is what I understand by deluded opinion.

Q. Is it simply an erroneous opinion?

A. No.

Q. Irrational and absurd?

A. No; a fixed delusion I should regard as a deluded opinion.

Q. A fixed delusion, and by delusion you mean, an erroneous opinion which is unreasonable in itself?

A. So grossly unreasonable that it has no shadow of reason to support it.

Q. Such an opinion as that then, persisted in, where there is no hallucination, you would pronounce insanity?

A. Yes.

Q. Is it possible to determine the existence or non-existence of

monomania, without attention to the condition of all the mental faculties, and without some knowledge of the antecedents of the patient?

A. It is, particularly.

Q. Is it generally so?

A. Not generally. You have to observe it, but you need not regard commonly—you need not take into account the other qualities of the mind at all. Some monomanias are very demonstrative.

Q. Would your opinion upon that question be modified, if you found that these authors on insanity held exactly the contrary opinion?

A. I should like to hear the question again.

Q. Would your opinion upon that question be modified or altered—

A. [Interrupting.] The other question, I mean.

Q. The question you answered is this: Is it possible to determine reliably, the existence or non-existence of monomania, without attention to the condition of all the mental faculties, and to the antecedents of the patient?

A. I say it is.

Q. Now, I ask you, if your opinion upon that would be modified or altered, if you found that these authors on insanity, hold exactly the opposite opinion?

A. It would not be the least modified, because I have seen that, commonly.

Q. Let me read you two or three passages here. I will ask you then—

MR. BARNES—[Interrupting.] I object to the use of these books. They cannot be read in argument, and the witness cannot testify from books at all. They are not in evidence, and they cannot be used in evidence in any way.

MR. PRATT—I propose to read an extract from the book, and ask the witness whether it is correct. [After argument.] I will hand the book to the witness, and ask him to read the passage for himself, and then state whether from reading that, his opinion is modified.

MR. BARNES—I object to that.

MR. PRATT—I withdraw the question.

Q. What is the distinction between monomania and insanity?

A. Monomania is generally—is always a fixed delusion on some subject, or set of subjects. Moral insanity merely means a perversion of the mental faculties.

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A. As I said, there is a good dash of moral insanity in it, and there is a good deal of perversion of moral feelings apparently scattered through it; but there is a decided and fixed monomania.

Q. What do you consider the marked distinction between eccentricity and insanity?



A. There is no marked distinction. Eccentricity carried to excess very often runs into insanity.

Q. Is it not sometimes extremely difficult to tell where the one leaves off and the other begins?

A. Very difficult, indeed.

Q. And particularly so, where it is known that that great general eccentricity has existed for a long time?

A. Yes.

Q. Suppose the patient, as described by Mr. Barnes yesterday, during all the time of these occurrences, or a good portion of the time, was under medical treatment, taking large quantities and a variety of medicine, would that fact weigh anything, in determining his sanity or insanity, or the condition of his intellectual faculties?

A. No.

Q. In answering these questions, you use the terms "insanity" and "unsoundness of mind" indiscriminately, I suppose, and include every form and degree of insanity, that is, every form and degree that is expressed by those terms generally?

A. Yes.

Q. Suppose a will in itself to be ever so strange and unaccountable upon ordinary grounds of human judgment and experience, and yet it is just such an instrument as those acquainted with the character and conduct of the testator, in former years, and before any suspicion of delusion, would rationally expect from him, would the instrument itself, to your mind, bear any evidence of insanity?

A. If it was such as they expected?

Q. Yes, sir.

A. There are two considerations in reference to that subject; that lunatics have been known to make very sane wills, and their wills have been received too, I believe; again, with regard to what his former acquaintance knew of a man, would not alter my opinion much, because the ordinary acquaintance that men might have had dealings with in society, would not, in many cases, be able to determine whether the monomania is such or not.

Q. Suppose the instrument itself makes just such provisions and dispositions, and is just such an instrument as men would reasonably expect from the testator who made the will, would then, the instrument be itself any evidence of insanity?

A. Not at all, in my opinion.

*Re-direct Examination* by MR. BARNES—Q. You were asked yesterday by Judge Pratt, with reference to the irritability of consumptives. Will you tell the jury what that character and kind of irritability is?

A. Well, in consumptives, the only irritability that I have ever seen connected with consumption, where the patient was not insane, was a kind of fastidiousness—a little particular in minute things, but never going to any excess of passion at all.

Q. Then it is not that kind of irritability which manifests itself in furious and continued fits of passion, in the use of blasphemous and vile language?

A. I never saw a case of consumption in my experience where that was manifested at all, to any degree to notice.

Q. You were asked by the counsel whether if a man had been brought up in Judaism and the Hebrew faith, his use of language of that kind in relation to Jesus Christ would satisfy you that there was

something wrong about the man's mind. Now, I ask you, if a man has been brought up under the influences, at least, of the Christian religion, who is surrounded by people who make that a study; by clergymen, by devoted people of all sorts, and who considers and debates the question, and declares that he will become a believer in the Christian religion and declares his faith in it, and then following that uses language such as has been detailed here, would not that be a very important influence in determining whether that was an insane state of mind in a man that would talk that way?

A. Yes; because I would expect one brought up under those influences would have more reverence for Jesus Christ, and, of course, speak less slightingly of him. That would be the only difference it would make, in my opinion.

Q. In one case your opinion would be more decided than in the other, though the same in both?

A. Simply more decided; yes.

Q. You find a man who in one breath talks that way of Christ, and at the same time sleeps with a crucifix under his pillow, adding that element to it, would it not become still more important?

A. Yes, much more under those circumstances.

Q. Now, suppose a man who is in feeble and declining health, who converses with religious people on the subject of religion, with clergymen and others, and gives land to build churches, and gives land to educational and religious institutions, and, as I say, goes to the extent of keeping a crucifix under his pillow, which is particularly associated with Christ, sleeps with it under his pillow, and then uses language such as has been detailed here, how strong evidence would that be to your mind of insanity?

A. It would be stronger still, because it would show greater incoherency of character and conduct.

Q. You were asked whether many men in the possession of their ordinary faculties, are not oftentimes unreasonably jealous of their wives? Did you understand that question to apply exclusively to their affections?

A. I don't quite understand you.

Q. You were asked by Judge Pratt, whether some men, of good sense, or, beyond all question of sane mind, were not unreasonably jealous of their wives? I ask you now, what you understand that language to mean? What sort of things they are jealous of?

A. Of course it applies to the affections chiefly, but then it might—

Q. [Interrupting.] Would you say that it was of frequent occurrence that men of sane mind and sound judgment were suspicious, and expressed their suspicions again and again, and acted upon the suspicion that his wife would poison him or murder him—do you include that in the term jealousy?

A. No; it amounts to that; I think it is insanity.

*Re-Cross-Examination*, by MR. PRATT—Q. In answer to Mr. Barnes, about the irritability of consumptives, you explain what had come under your own observation, and said that you had not witnessed any of those extraordinary outbursts of passion, as being the result of that irritability. Suppose that the patient was, by nature, a man of extremely violent temper, quick and passionate, then I suppose, although

a consumptive, he might burst out into these passions, without it being ascribed to insanity?

A. Yes, to a certain extent.

MAJOR S. McCLURE, called for Contestant. Sworn.

*Examined* by MR. BARNES.—Q. Where do you reside?

A. In Oakland.

Q. What is your profession?

A. Commandant of the Oakland Military Academy.

Q. Were you in Europe in the year 1870?

A. I was.

Q. What time did you return?

A. I returned in May; the first part of May.

Q. On what vessel?

A. On the *Harmonia*, a Hamburg steamer.

Q. Where did she sail from?

A. From Havre.

Q. To what port?

A. To New York.

Q. Was Mr. Hawes a passenger on that steamer?

A. He was, with his son and nephew.

Q. I want you to state to the jury, what you observed of his conduct and treatment of his boys on the steamer?

A. The first day on the steamer, I saw the two boys; I recognized them. They had attended the Academy before they went to Europe—the last place they attended school. I recognized them, and immediately went up to, and spoke to them, and inquired if their father was on board, and he said he was. Then, as I had known them before, I looked after them, to see if they had their wants supplied, as the father seemed to be in very feeble health. After they had been out the first day, I noticed that they walked up and down the deck, with books in their hands, and I inquired what the books were, and they proved to be books of French, to study French—French lessons. I asked them why they were studying, and they said they had to. I asked them how much time they would have to study, and they said they had to get up at four o'clock—

MR. PRATT—[Interrupting.] I object to that. It is not competent to prove by this witness what the boys said.

A. I saw it, sir.

MR. BARNES—State what you saw that they were required to do, and omit anything that was told you by the boys themselves; coming from children of such an age, I suppose it would be pretty conclusive evidence anyhow, and I don't know that we are entitled to show by this witness any statements made to him by them; but I do not press the question in that form. Go on, and state what occurred.

A. I have often got up before six o'clock in the morning—and on steamers people generally don't get up before that time—and these two boys were up at that time in the saloon, with French books in their hands, hard at work trying to learn their lessons, so that they would be able to know them before breakfast; and it was very seldom during that passage that they could accomplish their work.

Q. Did you have any occasion to look at the extent and the character of the tasks that were set them?

A. I did. It was entirely too much for the boys to learn, and especially before breakfast. The rule was, that unless they knew them

before breakfast that they could have no breakfast to eat, which occurred a great many times on the passage. And if they had not learned them before noon, they could not have any lunch; and they were deprived repeatedly, during that passage, not only of breakfast and lunch, but went even so far as not getting any dinner. My aunt, who was a passenger on board that steamer, very frequently would supply them with refreshments, and order the steward to do the same, and did it unknown to the father, and did it secretly, so that the boys could have the necessities of life; and during that time, those boys were in a condition that it was impossible for them to study, as they were subject to sea-sickness, and all persons who have ever been at sea, know that it is impossible to study, much more to read, while sea-sick.

Q. I ask you if you ever saw any other thing coming directly from Mr. Hawes in the way of punishment to the boys?

A. I did.

Q. State that.

A. During the last part of the voyage, he was confined to his room. He sent for me, and I came to see him. He was very feeble in health, and he asked me if I would not get somebody to translate what the Doctor had to say to him. The Doctor was a German on the Hamburg line, and was unable to converse in English; and I told him I certainly would. On that passage, I became acquainted with a person who sat opposite me, a German gentleman who had been in New York a great many years, and seemed to be a very nice gentleman, and I asked him if he would not, in favor to me, and Mrs. Hawes, as she was a very fine lady, whether he would not look after Mr. Hawes, and translate what the Doctor would tell him. He said he would; and so he went in with the Doctor; or rather, he went in first without the Doctor. I introduced him to Mr. Hawes, and he told me he would do what he could for him. And then the gentleman went out and brought in the Doctor, and acted as interpreter. Well, in one of my visits to Mr. Hawes, Horace, his son, was in the room, while I was talking to Mr. Hawes. Horace stood right opposite; and he happened to look around and see Horace standing there, and he swung out his arm and knocked him down, and made the remark, "I don't want you to stay there looking at me."

Q. Was the boy doing anything at all to merit being knocked down?

A. Nothing at all, except looking at him.

THE COURT—Q. Which one of the Horaces was that?

A. His son, Horace Hawes.

MR. BARNES—Q. Do you know about how old Horace was at that time?

A. He was about the age of eleven. He is a year younger, about a year younger than his cousin.

Q. At the time he knocked him down in the way you described, did he say anything more than that he did not want him standing there looking at him?

A. That is all.

Q. What did the boy do?

A. He picked himself up.

Q. He made no answer?

A. He did not say anything, sir; and then after that, I think after that, he backed out of the room. After I came out of the room, I asked his son whether he often was treated that way, and he told me

that in France, at Cannes, I think it was, he said that his father went for him with a chair, and that he was kept—then I asked him also, if they were kept from eating, and he said he was; that it was similar treatment to what he had received at Cannes. He told me that on the steamer after my visit.

*Cross-Examination* by MR. PRATT—Q. You say that during the voyage, Mr. Hawes was very feeble. I understood you to say that Mr. Hawes was feeble physically?

A. He was, sir; so much so that the last part of the voyage the Doctor said he did not expect he should live until he got to New York. He said that the chances were, that he would die at any time, but yet that there would be another chance that he should arrive safely.

Q. During what portion of the voyage was he in that extreme state?

A. The last portion.

Q. How was he when you first embarked?

A. He was very feeble, but he would be able to walk back and forth—to walk around slightly.

Q. Did he remain in his room most of the time during the voyage?

A. Most of the time, yes, sir.

Q. In bed usually?

A. The last part of the voyage altogether, so much so he had to have a nurse.

Q. The last half of the voyage?

A. Yes, sir; I think you can say the last half.

Q. How many days did the voyage last?

A. We sailed on the night, or afternoon rather, of the last day of April. We arrived in New York on the morning of the eleventh of May; I think the eleventh of May, in the morning. It was a rainy morning.

Q. How many days before you arrived in New York, did this occurrence between him and his son take place?

A. I should think, sir, it was about three days, or during the sickness; it was about three days.

Q. About three days before you arrived in New York, and when you had been out eight days from Havre?

A. About that time, sir. I don't say it was three days—it was about three days.

Q. Did he strike the boy with his clenched fist, or open hand?

A. He struck him with his clenched fist.

Q. He said nothing to him, except that he didn't want him to stand there looking at him?

A. That is it.

Q. What had been the subject of conversation at that time, between Mr. Hawes and yourself?

A. I came in to pay him a visit, to inquire after his health; how he was.

Q. Mr. Hawes was lying in bed, so feeble that the Doctor doubted whether he would live to reach New York, and he swung out his hand, with his clenched fist, and struck the boy, and the boy fell down, and got up, and went out of the room?

A. Yes, sir.

WILLIAM E. MURPHY, called for Contestant. Sworn.

*Examined by MR. BARNES.*—Q. How long have you lived in San Francisco, Mr. Murphy?

A. About five years and six months, I think.

Q. Have you been a peace officer, or a police officer, during that time?

A. A special police officer about three years and six months, I think.

Q. On what beat?

A. My beat was from Eighth to Fifteenth street, Mission, Howard, and Folsom, including the intermediate streets.

Q. Did you know Mr. Hawes?

A. I did, sir.

Q. When did you get acquainted with him?

A. I got acquainted with him in the Fall or Winter of 1869, I think.

Q. I want to call your attention to one occasion, when you met him at night during that year, if it was that year?

A. Yes, sir.

Q. Did you?

A. Yes, sir.

Q. State to the jury what that was.

A. I met him at about two o'clock in the night, coming home in a carriage from town. I think he was in town, and he asked me if I was not the officer, and I told him yes.

Q. Where was this?

A. Near his gate, at his place, sir, getting out of his carriage. I told him yes; he told me, yes, I was a good, faithful one, too. It was raining at the time, and he told me that other robbers were in bed, while I was doing duty faithfully to the people. He told me to come and see him at his office.

Q. When?

A. The next day, or a few days afterwards, any time I would call at his office; he wanted to see me on particular business. I went there; I could not see him at the first time, and I went there the second time, about five days, I think, or so, after, and he told me he wanted me to hunt up a case. I asked him what it was, and he said there were parties around to assassinate him, and that there was poison in his food, and if I would hunt up a case, that he would make a rich man of me.

Q. Did he mention any person who was procuring his assassination?

A. I asked him if he had any suspicion that would give me any clue to it; and he told me that it was his wife that put his poison in his food.

Q. What else did he tell you; or, did he say anything about her to you at that time?

A. Yes; he told me that she was very bad to have around the children; that she would lie and steal; and he also told me that she visited houses of ill-fame, and was not fit to clean his shoes.

Q. Did you make any effort to see if there was any foundation for this story?

A. I have, sir.

Q. Did you find anything?

A. No, sir; I have heard Mrs. Hawes spoken of by every one as being a good woman.



Q. Did you ever report to him the result of your inquiries?

A. I did, sir.

Q. Where?

A. To Mr. Hawes.

Q. What did you tell him?

A. I told him that I could find no clue to any parties that wanted to assassinate him or take his life. He told me then that he was able to do duty himself; that he kept revolvers in his room, and told me to continue on that I might find it out.

Q. Did he pay you anything?

A. He paid me ten dollars, and engaged me at five dollars a month. That was the first time he paid me ten dollars. I got more money than that afterwards. I got twenty-two dollars on another bill.

Q. Who paid the other bill for your service?

A. I think it was a gentleman by the name of Mr. Bates?

Q. To whom Mr. Hawes sent you?

A. No, sir. I went there several times.

Q. Now, I want you to state what Mr. Hawes told you at the time you told him there was no foundation for his stories, and that there was not anything in them?

A. This was after his coming from Europe. The second time I went to see him; and he told me that he wouldn't pay me.

Q. What?

A. He told me that he wouldn't pay me.

Q. Why not?

A. Well, he said that when he was a rich man that Father Gallagher used to go to see him, and Bishop Alemany used to go to see him, and the Sisters of Charity would go to see him, "But now, my dear sir, when I am a poor man, I am deserted by all. I have not ten cents, my dear sir, to my name; I haven't wherewith to lay my head; I cannot even get a cold potato." I told him that I would send the Sisters, or that I would send the priest; and I told Father Gallagher to go and see him, that I thought he was crazy. I told the Sisters to go and see him. I sent two men from the St. Vincent de Paul Society to go and see him. I saw him afterwards. After seeing the Sisters, he told me I might not send any more of them there; that they wouldn't bring him something to eat. He asked me if I knew he was in Europe, and I told him, yes, he had told me when he was going away, and told me to do duty for him, while he was away, around the house—to mind the place for him. He told me, amongst the nations he visited, that robber nation France, he told me, as soon as they found out he was the Honorable Horace Hawes, they set plans to take away his life, and he had to leave the next morning. He told me that he had to leave the next morning or that he would be assassinated, but he said that he prophesied before he left that the city would be burnt, and that the whole of the people would be destroyed. He asked me if I was a Catholic. I told him, yes, I was a Roman Catholic; and he got very excited; he told me that they were thieves, and murderers, and cut-throats. I asked him for my pay, as I sent in several bills—I think probably about two dozen—and he told me he would not give it to me; that he had not ten cents. I asked him how was Mrs. Hawes, that I didn't see her around. He told me to "get out; get out of my house, you puppy!" He told me about some great building that he was going to build, and that he was going to have his statue, with golden letters in it, with the name

of the Honorable Horace Hawes written on it; that his name would be handed down from generation to generation. He told me that Archbishop Alemany was a good man, that Jesus Christ was a smart man, but he said that he was smarter than any of them.

Q. Did he tell you this, about his name being handed down from generation to generation, at the occasion when he told you to "get out, get out"?

A. Yes, sir.

Q. Did you say anything to the boy there as you went?

A. Yes, sir.

Q. What did you tell him?

A. Well, I made him a remark outside; I don't like to tell it.

Q. Let us have it.

A. I told the boy that I would like to have the kicking of Horace Hawes, and to have my name handed down from generation to generation for kicking the Honorable Horace Hawes.

Q. How many times did you go there for your pay?

A. I went there, sir, twelve or fourteen times, and since then, I left a couple of dozen bills there.

Q. Did you ever get it?

A. I never got any of it, only twenty-nine dollars one time, and ten dollars the other time. I guess he owed me close upon two years—about a year and eight months. I done duty for him the whole time he was away, nearly.

Q. When he was telling you about his poverty, and about his having no money, and not ten cents, and describing his miserable condition to you as I understand you to say as a reason why he could not pay his bills, and when you mentioned the subject of Mrs. Hawes, did you observe any change in his manner or demeanor?

A. Yes, sir.

Q. What?

A. His eyes were very wild, and flashed and excited.

Q. That was the only reply he made, "get out, get out, get out, you puppy."

A. Yes, sir.

*Cross-Examination by MR. BALDWIN*—Q. When was this first occasion you met Mr. Hawes?

A. In the Fall or Winter, sir, of 1869.

Q. Do you know which?

A. I think it was—well I could not say which.

Q. Do you know what month?

A. I think it was about December—I think November or December.

Q. December, 1869.

A. Yes, sir; I think so.

Q. You were on your duty at that time were you?

A. Yes, sir.

Q. Had you ever met him before?

A. No, sir.

Q. How soon after that did you call upon him?

A. I think it was three or four or five days.

Q. Where?

A. I called on him at his house.

Q. Where is that?

- A. On Folsom street, between Ninth and Tenth.
- Q. I merely wanted to know what house?
- A. His own house.
- Q. Where did you find him?
- A. I found him in his bedroom.
- Q. What is that?
- A. That is a little room in off the library.
- Q. Who was with him?
- A. There was no one with him, sir.
- Q. Who let you in?
- A. It was a little boy.
- Q. That was five days after the first meeting?
- A. About that, sir; four or five, I could not well tell how many days.
- Q. He knew that you were a special policeman?
- A. He asked me so, the first night.
- Q. You say he engaged you at five dollars a month?
- A. Yes, sir.
- Q. To do what?
- A. To watch around the place, to watch people that was wanting to assassinate him.
- Q. Were any other parties engaged to watch the place at the time?
- A. Any other parties? Oh, yes; certainly.
- Q. How do you receive your salary, as policeman?
- A. Well, from a dollar, fifty cents, two dollars, a dollar and half—
- Q. I don't mean how much. I want to know how you got your income?
- A. We collect it on the first of the month.
- Q. From whom?
- A. From family to family.
- Q. The parties who employed you?
- A. Yes, sir.
- Q. How long did you remain in his employ?
- A. He never discharged me, sir; only the time about a few months, or before his death, when he told me to get out.
- Q. How long did you consider yourself employed?
- A. I think I considered myself something about two years.
- Q. You considered yourself engaged to him, at the salary of five dollars a month?
- A. Yes, sir.
- Q. And he paid you how much?
- A. He paid me the first bill, ten dollars.
- Q. It was thirty-two dollars in all?
- A. No, sir.
- Q. Twenty-two dollars at one time, and ten at another?
- A. Yes, sir.
- Q. That makes thirty-two?
- A. Yes, sir.
- Q. Is that all he ever paid you?
- A. Yes, sir.
- Q. You never could get any more out of him?
- A. No, sir.

Q. And when you made application for full pay, you say he declined?

A. Yes, sir.

Q. You never got it?

A. No, sir.

Q. Where did this conversation take place, when he spoke about his statue?

A. In his own bed room.

Q. Where?

A. On Folsom street.

Q. When was that?

A. In his own bedroom, on Folsom street.

Q. When?

A. After he came from Europe.

Q. That was another time, then?

A. Yes, sir.

Q. At the first occasion nothing took place, except the hiring?

A. That is all, sir; he told me, of course, what I told you there now; there is parties wanting to assassinate him, and his food was poisoned.

Q. That was on the first occasion?

A. Yes, sir.

Q. He wanted you to look up the case?

A. Yes, sir.

Q. What clue did he give you, if any?

A. He told me that he suspected Mrs. Hawes, that he knew that it was she.

Q. Did he ever give you any other clue?

A. No, sir, that I remember of.

Q. Did anything else take place on that occasion except that hiring; looking up the case, at the first meeting?

A. No, sir; only what I have stated.

Q. How often did you see him from that time until he went to Europe?

A. I saw him several times from that time till he went to Europe.

Q. Did you go to his office after that?

A. Yes, sir.

Q. How many times?

A. I went to his office probably ten or twelve times, and sent him a good many bills there.

Q. For what purpose did you go there; to collect bills?

A. To collect bills.

Q. Did you find him?

A. No, sir; I have not found him only twice afterwards; that is to be talking to him—twice or three times.

Q. Before he went to Europe, you only found him twice.

A. Twice or three times; but left bills there.

Q. Did you present the bills directly to him?

A. No, sir; I left them at the office, some of the bills.

Q. Did you ever present any directly to him?

A. Yes, sir.

Q. What did he say then?

A. He put it on the table; he would say the clerk would see to it.

Q. The clerk would see to it?

A. See to the bill.

Q. Did he abuse you?

A. Yes, sir.

Q. On which occasion did he abuse you?

A. The last occasion, sir; when he told me, "Get out, get out, get out, get out of my house."

Q. Before or after he went to Europe?

A. After coming home from Europe.

Q. After he went to Europe it was; that amounts to the same thing?

A. Yes, sir.

Q. When did you first see him after his return from Europe?

A. I saw him in a couple of weeks, I think.

Q. When did he return?

A. Well, I could not exactly state when he returned. I think he might have stopped over in Redwood after he returned. I know he stopped over some time there.

Q. But you saw him two or three weeks after his return?

A. A few weeks after his return.

Q. Did I understand you a few?

A. I think so, sir.

Q. I understood you two; a few weeks after his return?

A. Yes, sir.

Q. Do you know in what month he returned?

A. I don't, sir.

Q. Do you know in what month you saw him then?

A. It was in the fall or winter, because it was raining.

Q. It was raining?

A. Yes, sir; that was the first time I saw him.

Q. Pass that and come down to the first time you saw him after his return from Europe. In what month was that?

A. I don't know.

Q. In what season—Summer, Fall or Winter?

A. I think it was about May, April or May.

Q. April or May, after his return from Europe?

A. Yes, sir.

Q. When he returned from Europe you don't know, but you are sure you saw him a few weeks after his return from Europe. That was in April or May?

A. I think so.

Q. When did you first know that you would be a witness in this case?

A. I have not known that I would be a witness in this case—I did not want to be a witness in the case.

Q. There was a time that you knew that you would be a witness?

A. I knew a few days ago, two days ago, I think.

Q. Only two days ago, that is the first time you ever knew it?

A. Yes, sir; that I would be sent after to be a witness.

Q. The first time any one ever spoke to you about it at all?

A. No, sir.

Q. Did you understand my question?

A. Yes, sir.

Q. Was that the first time you were ever spoken to about it?

A. Yes, sir.

Q. How many days ago was that?

A. Two days ago.

Q. That would be on Wednesday, would it ?

A. Yes, sir.

MR. BARNES—I found him, I think it was, day before yesterday.

MR. BALDWIN—I will ask you when I want to get your testimony, Mr. Barnes—Who spoke to you then ?

A. Mr. Hawes, sir; I seen him in the room, I seen him twice or three times after him coming home.

Q. Who first spoke to you about being a witness in this case.

A. Mr. Barnes did, sir.

Q. Who is Mr. Burns ?

A. Mr. Barnes.

Q. Where did you meet him ?

A. I saw him coming out here.

Q. Where ?

A. He saw me here.

Q. How did you happen to be here ?

A. Mr. Bates, I think, knew me to be a special officer.

Q. Why do you think he knew you to be a special officer ?

A. I happened to come down here to hear the trial.

Q. Why do you think Mr. Bates knew you to be a special officer ?

A. I think he paid me a bill of twenty-two dollars.

Q. Have you ever talked with Mr. Bates about it ? About being a witness in this case ?

A. No, sir.

Q. Have you ever talked with anybody before your meeting with Mr. Barnes ?

A. No, sir.

Q. You are sure of that ?

A. I am certain; yes, sir.

Q. Are you as sure of that as to anything else you have testified to ?

A. Yes, sir.

Q. No one ever spoke to you about it at all ?

A. No, sir.

Q. How long did you talk with Mr. Barnes ?

A. A couple of moments, sir.

Q. Where ?

A. Right here, sir, going out.

Q. Can you state how many minutes ?

A. I don't suppose it was two, sir.

Q. Less than two minutes; that is the entire conversation you have ever had with anybody about being a witness in this case until you went upon the stand ?

A. Yes, sir.

MR. BARNES—I will read a paper in Mr. Hawes' handwriting in connection with the statement of this witness, that he had been subjected to outrages, and had been attacked in France, and had been compelled to leave the country. I read from a copy of it—the original is in Mr. Hawes' handwriting—about which there is no dispute.

[Mr. Barnes reads Exhibit 5.]

MR. BARNES—I think it only proper to say that while I read this paper from the copy, it is my intention to exhibit it to the jury, and show the changes in the phraseology and expression that are marked and peculiar, in respect to the erasing and altering of portions with reference to the statement he makes about himself, and admissions, and so on. You can have it to examine for that end.



J. C. SHORB, called for Contestant. Sworn.

*Examined by Mr. BARNES*—Q. What is your profession?

A. I am a physician and a surgeon.

Q. How long have you been engaged in its practice?

A. About twelve years.

Q. How long in this State?

A. Since 1860.

Q. Have you been present in Court during the examination of the other medical witnesses?

A. Yes, sir.

Q. And heard their evidence in the case?

A. Yes, sir.

Q. Have you ever paid any attention to the branch of medical practice known as insane cases?

A. I have seen in hospital practice a number of insane people.

Q. Is the term "insane" a generic term that covers the classes of mental derangement, or does it only refer to a particular class of mental disorders?

A. It covers the whole ground.

Q. Then when you say that a man is of an insane mind, or insane, you mean all kinds of insanity are included in that?

A. I do, sir.

Q. What do you understand by the term monomania?

A. I mean a particular fixed delusion on one subject or in one direction, or on a lot of kindred subjects.

Q. Where monomania exists, is it necessarily accompanied by general mental unsoundness on other topics?

A. In some cases you find a delusion on one fixed subject—fixed on one subject alone, the mind in other respects of the same subject entirely clear or sound.

Q. May or may not another mental delusion upon one subject or set of subjects exist in the mind of a man while his mind is sound, and who has discretion and judgment in respect to other matters?

A. Certainly.

Q. Would you then be firm in your judgment, as to the mental condition of a man who labored under such a delusion, as for instance that he was the Savior of mankind, would you be governed in consideration of that fact, or would your opinion as to the condition be changed if it appeared in connection with this idea, that he was able to transact ordinary affairs of life? In other words, what effect upon your judgment, as to the question of sanity or insanity, would be produced by the added circumstance, that he was able to transact the ordinary business of life?

A. It would make no difference.

Q. Is it not often the case that a man is afflicted with one insane and fixed delusion, upon one subject or set of cognate subjects, and that delusion is accompanied by very marked insane characteristics?

A. Occasionally.

Q. Did you hear the hypothetical case that has been put here to the other witnesses?

A. Yes, sir.

Q. Are you familiar with the points made in that question?

A. Perfectly so.

Q. Will you please to say, then, assuming these facts which I have stated in that question to be true, what would be your opinion as to

the mental condition of the party described in the question, and to what particular class of insanity would you assign it?

A. There is no doubt in my mind that he is a man of unsound mind—an insane man; and that the class of insanity was monomania.

*Cross-Examination by MR. PRATT*—Q. You say monomania is a fixed delusion upon one subject?

A. Or set of subjects? Yes, sir.

Q. Can a man be a monomaniac on two or three subjects which are not cognate?

A. If they have any direct relation or connection with each other. Yes.

Q. Suppose they have no direct relation or connection with each other at all, and you found a man to be a monomaniac upon three or four subjects of that kind which are entirely separate and distinct, and have no relation or connection with one another, would you pronounce him a monomaniac upon each one of these subjects?

A. It is very hard, indeed, to say exactly to what class of insane people such a man would belong. It would be safe to say, to cover the whole ground, that he was insane generally.

Q. Generally?

A. Yes, sir.

Q. Would you call that general insanity?

A. Yes, sir.

Q. What do you mean, Doctor, by the term “fixed delusion?” A delusion of the judgment which can’t be removed by evidence?

A. Or by the exercise of reason.

Q. Do I understand you to say that there may be an entire loss of reason on one subject, and soundness on all others?

A. Yes, sir. No, sir; I beg your pardon; I said there may be a fixed delusion on one subject.

Q. There may be a fixed delusion on one subject?

A. And the mind outside of that consideration may be perfectly sound and clear.

Q. Then there cannot be an entire paralysis of the reasoning faculties upon one subject and soundness on others?

A. No, sir.

Q. You say that if you find a fixed delusion, that question being settled, the man’s sanity upon other subjects would weigh nothing with you? But what we want to get at is this: Suppose you were called to determine the very question whether a man is a monomaniac, whether there is a fixed delusion upon one particular subject, then in determining that question would you take into consideration at all his sanity upon other subjects?

A. It is necessary, at times, to make a close examination, to discover the existence of monomania, and a patient laboring under an affliction of mind might scrupulously avoid giving you any clue by which you could discover the existence of monomania; so that when a patient presented himself to me, charged or suspected of being a monomaniac, and I did not know it myself, only from hearsay, I should certainly consider everything in connection with the case, before I made up my mind in reference to the case, and the existence or non-existence of monomania.

Q. Could you reliably determine whether there was monomania or

not without that, except in those marked cases where the delusion is absurd in itself?

A. Well, there are all grades of monomania. Some are excessively manifest where no examination into the antecedents is required, to show that he is a monomaniac.

Q. Give an illustration right there, Doctor, of one of those cases.

A. Well, there have been a great many cases detailed here in Court. A man whom Dr. Buckley spoke of—a clergyman—who had such a dread of being poisoned, that they were obliged to pump food into his stomach with a stomach pump, and who was unusually sound in other respects. There the case was a very manifest one.

Q. What about the other classes of cases?

A. There are other simple trivial delusions, and they go on collating or intensifying, until they become open, manifest cases of monomania, of which there can be no doubt.

Q. But in a case where it was doubtful, rather, where no such marked and leading symptoms as would place it beyond all question you could not safely give a diagnosis of a mental disease, without knowing the antecedents and all about the man?

A. You could not give a diagnosis of any disease, without knowing that.

Q. Exactly; in an obscure case?

A. Of course, I mean in obscure cases.

Q. Suppose, Doctor, you was called to determine the question of monomania in a patient, and you found among other things on examination, that there had been a remarkable degree of general eccentricity through all of his life, before there was any insanity at all, would not that fact cut a very important figure in determining the existence or non-existence of the monomania?

A. It might or might not, as the case might be.

Q. Suppose a case of monomania; one of these doubtful and obscure cases of which you speak; how would it be then?

A. I apprehend always there is difference between eccentricity and monomania; and it is, as a general rule, so marked, that there is no difficulty in distinguishing between them.

Q. Well, explain to the jury what that distinction is which renders it so easy to distinguish between them?

A. Well, there is in the minds of all men springing from the same stock, and having the same language, civilization, and worshipping the same God, a certain specific standard accepted of conduct, of modes of expression, thought, feeling, of social habits, and customs, and address; and I apprehend that any deviation or departure from this accepted standard constitutes eccentricity, and that eccentricity is marked in proportion as its departure is greater or less from the standard; and if in this consideration there is involved any delusion, this delusion is dispelled by the voice of reason. But in monomania there is a fixed, settled delusion, which no argument can disturb or logic reach, and which lives on in defiance of common sense and experience, until the restoration to mental health, or until the close of the patient's life. That is the testimony, I think.

Q. Is there any delusion at all in cases of simple eccentricity?

A. There may be, certainly.

Q. When it became delusion, would it not then cease to be eccentricity simply?

A. No, sir; but if that delusion was so fixed that reason could not reach it, that it remained there in defiance of reason, evidence and proof, then it is monomania and not eccentricity.

Q. You say in response to the general question, upon the hypothesis presented by Mr. Barnes, that you think Mr. Hawes was insane, a monomaniac?

A. I do, unquestionably.

Q. What are the facts upon which you base that opinion?

A. It would take a good long while to tell in this case.

Q. State the leading facts and circumstances, then, upon which your opinion is based.

A. First, his unwarranted suspicion, his dread of being poisoned, his excessive vacillation, his inhumanity and barbarity to the children, and his self-denial in the matter of food to the verge of starvation, his ideas of his self-importance, of his posthumous fame, and the fact that his memory was broken down, and his intellect was obscured, his judgment unsound, and his reason almost entirely incapable at times of performing the proper legitimate functions.

Q. Is there any relation, Doctor, between his barbarity to his children and his ideas of the Christian religion?

A. No relation that I could see.

Q. None whatever?

A. None whatever.

Q. Then the fact that he was unkind, or treated his children with barbarity, would have no tendency to show that he was a monomaniac on the subject of religion?

A. Not particularly.

Q. Would his blasphemous utterances, if they may be termed such, in regard to the Saviour of mankind, have any tendency to show that he was a monomaniac on the subject of property?

A. I don't exactly understand that question.

Q. I will ask you this one then: Is there any relation between his irreverence, or blasphemy, if you please to call it so—his ideas of the Christian religion and his love of money or property?

A. None whatever.

Q. Then, any remarks that he might have made of a blasphemous character, or anything that he might have said in relation to Jesus Christ, would have no tendency to show that he was a monomaniac on the subject of property?

A. That is one thing in itself.

Q. I ask you whether his utterances upon one subject which is entirely unconnected with another, would have any tendency to show monomania upon that other subject?

A. In Mr. Hawes' case, I believe, at times he professed great reverence for the Bible, and was constantly quoting to persons who came there passages from the Bible. If he had a reverence for the Bible at one moment, and talked in a blasphemous way a few moments after, I can come to no other conclusion but that he was insane.

Q. Would you infer from these facts standing alone that he was insane on the subject of religion?

A. Undoubtedly, if they stood alone.

Q. And from what has been said, or what is stated in the hypothetical cases about his love of money and extreme parsimony, denying himself the comforts of life from the love of money, would you infer he was a monomaniac on that subject?

A. Well, a great many are exceedingly close, and deny themselves a great many things which they wish to have; but when this self-denial goes to the extent almost of starvation, I don't consider that mere penuriousness or closeness, but I look upon it as a general evidence of an unsound mind.

Q. Now, then, I will ask you to answer the other question. Would his conduct, his opinions and his expressions on the subject of religion and in regard to the Jesus Christ, have any tendency to show that he was crazy on the subject of money?

A. None whatever.

Q. Would you also reach the conclusion from the manner in which he treated his wife, and his apparent hatred of her, his suspicion of her fidelity without cause, and that she wanted to poison him, etc., that he was a monomaniac on that subject?

A. Yes, sir; I look upon him as the characteristic type of a selfish man; and the maintenance of those ideas was painful to him, and if he could have got rid of them by any process of reason, I think he would have done so, he would not have stood the pain and annoyance.

Q. Let me ask you what his expressions and apparent mania upon the subject of posthumous fame have any tendency to show insanity towards his wife personally?

A. No, sir.

Q. His monomania towards his wife would have no tendency whatever to show a monomania on the subject of posthumous fame?

A. Not at all.

Q. Then I understand your conclusion to be, that he was a monomaniac in regard to his children—to his wife, a monomaniac on the subject of posthumous fame and property, and the Christian religion?

A. You were anxious to know how I should designate that insanity that Mr. Hawes exhibited. It is a matter of extreme difficulty to do that; but the class that I should give to it would be to say that it was a case of monomania, as under the head of mania could be included certain subjects and kindred subjects upon which he was manifestly insane; but outside out of that, that there was evidence of religious, intellectual, moral and emotional insanity, he was insane all through.

Q. If he was insane all through would not that constitute general insanity?

A. No; not quite.

Q. Now in regard to his monomania—well, I will put it that way—on the subject of religion: Suppose that the individual from his youth had been taught to, and had rejected the entire Christian religion, would then his expressions in regard to Christ, in a man of his temperament and disposition, would these expressions alone have a tendency to establish monomania on that subject?

A. Mr. Hawes was a man who read a great deal, from all I can learn, understood what he read, and read history. He was perfectly familiar with the life and doings of Christ; and if, with the light of history before him, he could say that Horace Hawes could do, or had done, what in any way, at all, compared with what Christ did do, I should certainly consider him an insane man.

Q. He didn't say that; but that he was a smarter man than Jesus Christ.

A. It amounts to about the same thing.

Q. He didn't profess that he could perform miracles. We might admit the inspiration, and the peculiar powers of Christ—he said his practical philanthropy was as great as that of Christ, or greater. Assuming that he didn't say that, I do not recollect of its being in the testimony. Take these simple expressions—

MR. BARNES—What Mr. Hawes said was this, that he told this lady to take a book and write down in it everything he said, for that after he was gone, the book would be published, and a hundred years hence would be read by more people, with greater interest, than anything Christ had ever done. That Christ was a smart man, but he was a smarter man than Christ ever was. Then Mrs. Hewes also testified that he told her that he was the greatest philanthropist that ever lived. And to another, that Jesus Christ was the first man, Bishop Alemany was the second, and Horace Hawes was the third; how much more, I do not know; that's enough.

MR. PRATT—Well, I understood you to attach considerable importance to the fact of the intelligence of the party. Are there not many very intelligent men, Doctor, men whose sanity and reason is unquestioned, who were brought up in the midst of Christian influences, and still reject the whole theory of the Christian religion?

A. Undoubtedly, but they don't accept it one moment, and reject it the next.

Q. Exactly. But the mere fact of these expressions, in regard to the question of religion standing alone, would not be any evidence of insanity?

A. Not alone, unaccompanied with the history; no.

Q. In answering Mr. Barnes' hypothetical question, you assume and understand, I suppose, that the acts ascribed to the patient were habitual?

A. That is on evidence.

Q. I did not ask you whether it was on evidence or not.

A. Of course, I believe it.

Q. Do you recognize, Doctor, and bear in mind, the distinction between an entire want of reasoning power and reasoning, but doing so incorrectly and feebly?

A. Of course.

Q. Have you ever had—have you ever treated many consumptives, Doctor?

A. Yes, a good many.

Q. Isn't it one of the direct effects of consumption, particularly in its last stages, to make the patient extremely sensitive and irritable?

A. Sensitive in what way? In feeling, or as far as the atmospheric changes are concerned?

Q. Atmospheric changes?

A. Certainly.

Q. And all external influences which operate on the physical system?

A. Oh, yes, sir.

Q. Suppose the case, Doctor, of a patient near death with consumption, who has been for a long time raising large amounts of matter from his lungs, and that suddenly stops, how would you regard that symptom, as favorable or otherwise?

A. Well, it is pretty hard to say; sometimes it may be a good sign, and sometimes a very bad sign. In the advanced stages of



consumption, close to death, as a general rule, it would be regarded as a bad sign.

Q. Suppose, Doctor, the fact to be—assuming the fact that these occurrences that are recited in the hypothetical case, instead of being habitual, only occurred occasionally, and in the aggregate a few times; three or four, to a half a dozen, and all of these cases within a period of two or three months, and that they occurred when the patient was extremely sick, suffering great physical pain, and the mind was over-tasked with business and the settlement of his worldly affairs; and when in the midst of fearful outbursts of passion, and that these outbursts of anger and passion only lasted a few moments, or sometimes an hour or two, and the patient then became calm and talked reasonably on all subjects, would you find insanity necessarily in that state of facts?

A. In the hypothetical question?

Q. In the case which I state?

A. I think it would be a very good general evidence that the man was of insane mind.

Q. He might not be, but the strong presumption is that he would be?

A. Yes, sir.

Q. Upon the case as I put it now?

A. Yes, sir.

Q. Wouldn't it be, in your judgment, almost conclusive?

A. That he was not insane?

Q. That he was insane?

A. Yes, sir.

Q. Upon the single statement of facts?

A. Yes, sir.

Q. You have heard considerable said about his indifference, or about his exposure of his person, and want of modesty. Where a man is extremely sick and feeble, and his mind is occupied with business, who is careless and indifferent about the exposure of his person to familiars, nurses, and those who have the care of him, but more guarded when persons of his own social standing are present, would you think the fact of exposure under such circumstances any very striking evidence of insanity?

A. I would, because there is a prejudice in favor of a man's being more careful in the presence of women than men, no matter how high they are.

Q. Then in the case, as I stated it, you would consider that indifference about his person strong evidence of his insanity?

A. Good evidence.

Q. Pretty much conclusive?

A. No, sir; not entirely so connected. I was three or four years in a hospital before I attended any medical lectures at all. I have seen people die, men and women, and I have seen in my life very little exposure of person, even at the last—even in cholera and yellow fever.

Q. You have generally been present on those occasions as a medical attendant, have you not?

A. As resident attendant at the hospital.

Q. You were recognized by the patient as an equal in social standing, if not his superior?

A. Probably.

Q. Doctor, you attach considerable importance to the expression of his fears of being poisoned or assassinated. Are not fear and dread of personal injury or danger more particularly and peculiarly the symptoms of melancholia than monomania?

A. Sometimes they are associated with melancholia, but very seldom. In melancholia, the patient is generally indifferent to all kinds of fear. They are indifferent entirely; they don't care much what happens to them.

Q. What do you say to this proposition; does a mere deluded opinion, however fixed and absurd it may be upon one subject, without hallucination, amount to insanity? Does that constitute insanity?

A. In my judgment it does.

Q. Can there be monomania, Doctor, without some derangement of all the intellectual faculties?

A. Well, it is a very hard matter to answer that question. You see cases occasionally of pure, unadulterated mania where there is a fixed delusion on one subject, and the intellectual faculties outside of this consideration may be bright, or preternaturally bright; but nobody can sound the mysteries of the human soul, or tell whether all of the faculties of the human mind are sound when there is a fixed delusion on one subject. It is impossible to answer such a question as that.

Q. Men reason very differently, I suppose, from the same state of facts and circumstances. No two men's minds hardly would reason alike. Now, would the mere fact that an individual reached a different conclusion from yourself upon a given state of facts, have any tendency at all to show a disordered intellect?

A. Not at all. The modes of reasoning, the processes of reasoning by which we reach the conclusion may be perfectly correct so far as the reasoning is concerned. But we may start wrong, one of us. The process of reasoning may be perfect which leads us to the same conclusion. Our premises may be wrong; there may be something wrong, but the processes of reasoning may be faultless, and take us to entirely different conclusions.

Q. In cases of eccentricity, simply and purely, the patient is always aware, isn't he, of his eccentricity and peculiarity, and persists in them?

A. He is generally told of them by some of his friends, if he is not aware of them himself.

Q. Is it the general characteristic of eccentricity that when told he refuses to believe, or denies it. Don't they generally admit their peculiarities, and simply persist in them against the judgment of other people?

A. I have seen a great many eccentric people, who, being reminded of their eccentricities, have cured themselves of them.

Q. Don't they generally have a knowledge of the fact?

A. Certainly.

Q. Isn't that single circumstance the most material distinction between eccentricities and monomanias?

A. Not at all. Monomaniacs are just as well aware of their peculiarities of feeling or delusion as an eccentric man is of his peculiarities or eccentricities.

Q. When that is the case, isn't it always accompanied with an effort to conceal it?

A. Sometimes it is; sometimes it isn't.

Q. Then there may be cases which you would pronounce *maius* where the patient was perfectly aware of his peculiarities, and made no effort whatever to conceal them?

A. Certainly.

Q. Suppose the patient, as described in that hypothetical case was under medical treatment during the time of all these occurrences taking large quantities—a variety of medicines—would that weigh any thing in determining the question of his sanity or insanity?

A. I should take into consideration the medicine that the man was taking, of course; because sometimes some medicine for a limited amount of time, given in medical doses, may have a general disturbing influence upon the intellect, which passes off with the exhibition of the medicine; it does not continue five or six years.

Q. It would cease with the effect of the medicine upon the man?

A. Yes, sir.

Q. But all these momentarily transports—outbursts of passion passing away in a brief time might be produced—they might be simply medicinal effects?

A. Oh, no.

Q. They could not?

A. The medicine might have a general disturbing influence upon the intellect. I don't mean to say that it would develop in a man blind, raving fury, but that he might have some slight delirium, or some slight cloudiness of the intellectual faculties.

Q. But in no event could it produce any such outburst of passion as has been described in this case?

A. No; I do not know any medicine that will do it. It would not be generally prescribed.

Q. You do not give that kind yourself?

A. Not much.

[Here the Court adjourned until two o'clock P. M.]

#### AFTERNOON.

CHARLES McCORMICK, called for Contestants. Sworn.

*Examined* by MR. BARNES—Q. What is your profession?

A. I am a surgeon in the army.

Q. How long have you been engaged in the practice of your profession?

A. Thirty-five years.

Q. Have you been present in Court during the trial of this case?

A. Yes, sir; most of or all the time.

Q. Did you hear the hypothetical case put by me to the other medical witness?

A. Yes, sir; I heard it.

Q. Are you familiar and do you now have in mind the proposition made in that question?

A. I prefer it to be read over.

THE WITNESS—[Continuing after a pause.] I am ready now, Judge Pratt has come; all I wanted was to delay until he came in.

MR. BARNES—Q. Assuming the facts as stated in the question to be true, and adding to it the facts that during a great portion of these manifestations the patient was suffering under tubercular disease of the lungs, of which he finally died, what would be your opinion as to the condition of the mind of the man described in the question; and

if of insane mind, to what particular grade or class of insanity would you assign his case?

A. Monomania.

Q. What should you say, as to the condition of his mind?

A. Insane.

Q. And the particular grade of insanity, would be monomania?

A. Yes, sir.

*Cross-Examination*, by MR. PRATT.—Q. Doctor, upon what particular subject would you consider him a monomaniac?

A. Monomania, with reference to his wife and posthumous fame; which is further shown by fear of being poisoned or assassinated.

Q. You would find him a monomaniac upon the subject of his wife, and also, upon the subject of posthumous fame; upon any other subject?

A. I told you it was further shown by his fear of being poisoned and assassinated.

Q. Doctor, can there be such a thing as monomania upon two or three different subjects, which have no relation to one another?

A. How do I understand you, sir?

Q. Can there be monomania upon two or three different subjects, which have no relation to one another; for instance, can the patient be a monomaniac upon the subject of property at the same time?

A. A monomaniac upon the subject of religion?

Q. Yes, sir.

A. That would come more under the moral sentiments.

Q. Well, you would pronounce that moral insanity; insanity upon the subject of religion alone?

A. Yes, sir, a form of moral insanity.

Q. Could the same patient be a monomaniac upon the subject of his wife, and at the same time a monomaniac upon the subject of property?

A. I suppose he could.

Q. The same individual then, may be a monomaniac upon two subjects, that are not related to one another?

A. In what way do you mean, not related to one another?

Q. That they are not connected or cognate subjects—not branches of the same general species?

A. The disturbance in his intellectual faculties, would derange or trouble his moral sentiments.

Q. When a patient is in that condition, would it not be a case of general insanity?

A. No, I think not. General insanity includes all of the faculties.

Q. Does not monomania necessarily involve disturbance of all the intellectual faculties?

A. No, not necessarily.

Q. Not necessarily?

A. Oh, no.

Q. Now, what are the particular facts, Doctor, in the hypothetical case, from which you conclude that the supposed patient was a monomaniac upon the subject of his wife?

A. By the evidence that has been given in the case here.

Q. Well, what are the leading facts in your mind, from which you drew that conclusion?

A. The facts in the question that Mr. Barnes put to me.

Q. The only answer that you can make then is, upon the general case as cited by Mr. Barnes, you find the patient a monomaniac upon the subject of his wife?

A. Not by that alone, as I told you by the evidence that I have heard given here.

Q. I would like, Doctor, to have you define, if you can, what the facts embraced in the hypothetical case are; I do not ask you anything about the evidence which Mr. Barnes cited in his hypothetical case to you, but what are the facts generally upon which you pronounce the supposed patient a monomaniac on the subject of his wife?

A. Well, he had a false jealousy of her—he had a delusion about her; he had ideas in his mind that emanated from the mind, that were not true, were not real, and that nobody could convince him to the contrary. That makes a monomaniac.

Q. It is on that basis that these ideas were unfounded and could not be removed, that you pronounce him a monomaniac?

A. Yes, sir.

Q. Now let me ask you if a statement of the patient's ideas and views about posthumous fame enter into the conclusion with you at all in determining whether he was a monomaniac on the subject of his wife or not?

A. No; I do not think that that is needed.

Q. You don't take that into consideration then at all?

A. No; I didn't say that at all. Monomania relates to one or two subjects, and I think he was a monomaniac upon each of those subjects.

Q. On each of those subjects.

A. Yes, sir; I do.

Q. You think then, he was a monomaniac on the subject of his wife, and also on the subject of posthumous fame?

A. Yes, sir; and accompanying this monomania he had fears of being poisoned and assassinated.

Q. Do you think also in the supposed case that the patient was also a monomaniac on the subject of property and money?

A. Well, I think he came pretty near being crazy on that belief myself, as shown by the evidence.

Q. Do you think also that he was insane, as stated in the hypothetical case, upon the subject of religion?

A. No; I do not think he was insane on religion.

Q. How is that?

A. I didn't think much about his religion, whether he was insane or not.

Q. Well, I understand you then to hold that a man may be a monomaniac upon two or three different subjects which have no relation to one another.

A. They generally relate to one another; have some relation to one another; but I think you are trying to mix up the moral insanity with the intellectual insanity. This is a case of intellectual insanity, in my judgment. The morals may be implicated by other causes and run along with it.

Q. Then what is it, Doctor, which constituted monomania? Must there be a fixed delusion upon a particular subject?

A. I think so.

Q. A delusion which cannot be removed by evidence and reasoning.

A. Yes, sir.

Q. A fixed, unalterable delusion ?

A. Yes, sir.

Q. Well, suppose there is a fixed and unalterable opinion upon some subject which is a matter of testimony simply, and there is no hallucination properly, does that constitute monomania ?

A. You want to put it that the hallucination in this error of judgment is accompanied ordinarily by a hallucination.

Q. It is ordinarily accompanied by hallucination ?

A. It is; this disorder in part is accompanied by hallucination.

Q. Could there be insanity or monomania in the absence of hallucination ?

Q. It would hardly be. No; there would most likely be some hallucination if there was insanity.

Q. Must there be necessarily some hallucination to make it insanity ?

A. I do not think it is absolutely necessary.

Q. You don't think it absolutely necessary that there should be a hallucination to make it insanity ?

A. No; I think it is a disordered intellect.

Q. A mere deluded opinion then ?

A. Oh, no; not a deluded opinion. A deluded opinion can be in a sound mind, and in the sound brain; but no monomania can be in a sound brain.

Q. Well, what then, if no deluded opinion ?

A. Well, there would be some hallucination, as I told you. I presume it would be a much stronger case if there was hallucination. As it advanced, it would develop itself more.

Q. Suppose the erroneous opinion, Doctor, is merely from the result of testimony of existing facts which are conflicting, and the conclusion arrived at by the patient is largely against the weight of evidence, and he cannot be reasoned out of his belief, wouldn't that alone constitute insanity ?

A. I think it would.

Q. Are there not a great many cases, Doctor, where the opinion entertained by the patient is in itself impossible and erroneous, and yet there is no insanity ?

A. I cannot conceive any such a case.

Q. For example, Doctor, how do you regard the views entertained by the followers of Brigham Young, that he is a prophet, divinely inspired ?

A. I suppose that is a very different thing. To tell you the truth, I believe they are all crazy.

Q. Your belief is that they are all crazy ?

A. Yes, sir.

Q. Is that conclusion based on the fact alone of their entertaining those opinions and those views ?

A. No, not at all. It is from the whole origin and purpose of Mormonism.

Q. Then you believe all the Mormons are crazy ?

A. I do not know that they are all crazy. They are—

Q. Deluded.

A. No; a great many of them are scoundrels, I think the big portion; the rest that are not scoundrels are crazy. I think the women are crazy; the men are, probably, all right enough.



Q. You recognize a distinction, I suppose, Doctor, between total want of reasoning power and non-action of the mind; a reasoning, but reasoning incorrectly, illogically?

A. Non-action is a thing I cannot conceive of, without they are dead.

Q. Well, there are cases, are there not, of total paralysis of the brain—absolute loss of mind.

A. No; there are some functions of the brain that are going on.

Q. Well, there are cases then in which the reasoning faculties are entirely overborne for the time being by passion?

A. Yes, sir.

Q. Then during the existence of that passion, which is sufficiently powerful to overpower the reasoning faculties, there would be no action of the mind, would there?

A. I cannot imagine passion without some action. It is deranged action. I cannot imagine such passion as you are laying down. I do not mean ordinary action. You certainly do not expect there is no action of the brain—as when a man is mad, in common parlance, there is action of the brain.

Q. Well, if it was so excessive as to overpower and control his judgment and reasoning, then would there be action of the intellectual faculties?

A. No, I think not.

Q. Doctor, you heard the question put to some of the other medical witnesses in regard to a consumptive patient who ceases to expectorate after having done so for a long time, and when very feeble and near death from consumption, how would you regard that symptom, as unfavorable or otherwise?

A. It depends upon circumstances accompanying it—the period of the disease. In a case of that sort, it may be favorable or unfavorable.

Q. Suppose it to be when death is near, and the patient is very ill and feeble, in the last stages?

A. In that case, it may arise from exhaustion, inability to raise the pus that is in the lungs, or the secretion, whatever it is.

Q. Then it would be regarded as indicative—then it would be pretty nearly a fatal indication. But in ordinary circumstances, in the commencement of that disease, a man can have what they call in medicine, a crop of tubercles soften, be expectorated, and the man would live on two or three, or twenty-five or thirty years before he will have another crop of tubercles. In the case, as stated to you by Mr. Barnes, you understand that the occurrences there stated, were habitual; you answered that question, I suppose, upon that basis?

A. Well, I do not know that; that they were very frequent.

Q. Well, suppose that the occurrences complained of and recited, were only occasional, and, in the aggregate, but a few times, and all within a period of two or three months; and they only occurred while the patient was extremely sick and suffering great pain, and while his mind was overtasked and occupied by large business interests, and then only in bursts of anger and passion, would you, upon that state of facts, standing alone, say that insanity was necessarily involved in those manifestations?

A. Monomania; yes, sir.

Q. How would you regard this matter of his carelessness or indifference about the exposure of his person, under those circumstances?

A. All that I have seen everywhere, wherever I have been at

hospitals, or in private practice anywhere, I never heard or saw anything like it.

Q. Never saw any carelessness or indifference?

A. I have seen carelessness, but no such premeditated carelessness as it seemed to have been there. Common decency—I have seen the lowest, meanest, and the most ordinary people; they are very loth to make any exposure of that sort; as far as I have seen, I have seen nothing of the sort.

Q. That is not the question that I present to you, Doctor. Suppose it was mere carelessness and indifference—disregard.

A. It is a kind of carelessness and indifference that I tell you I have not been in the habit of seeing. It is the rarest thing to see in the largest hospitals.

Q. You do not understand me, Doctor. I am not speaking with reference to the testimony in this case.

A. I am not talking of the testimony—of the decency of the whole world.

Q. You say that were carelessness and indifference in such a person, about exposing his person, would be an evidence of insanity?

A. No, I did not say that. I say that it is one of the evidences of insanity; that carelessness of a man's exposing his person.

Q. Doctor, I would like to have you answer now as I state it, and not with regard to the evidence you have heard, or to the case stated by Mr. Barnes.

A. I will try to answer them all as nearly as I can understand them.

Q. Suppose this: A man was naturally and all through his life had been exceedingly vain, egotistical, and very self-opinionated and bigoted; that is his natural temperament and disposition almost, and he is soured by some unhappy experiences; disliking almost everybody, and knowing that he himself is disliked by everybody, and hated; and he becomes extremely sick and feeble, very nervous; would it be any evidence of insanity in the man in that condition, when contradicted and disputed on a subject upon which he was very sensitive and very confident that he was right, he became impatient and burst into passion, and denounced the man who had disputed with him?

A. Is that your question?

Q. Yes, sir.

A. I think you draw a very good picture of a crazy man.

Q. You think that from those facts alone, you would pronounce him insane?

A. No; I would not pronounce him from those facts alone; I would take all the evidence I could get. But all those facts as you narrate them, I think, look particularly towards a disordered brain.

Q. Well, in the absence of knowledge of other facts, would not you be very much inclined to pronounce him insane upon that testimony alone?

A. I would be prepared for his insanity to develop itself at any moment. That is the nearest way I think that I can answer it, so far as I understand the question.

Q. But you would not be quite prepared to pronounce him insane at that time, upon that alone?

A. Pretty near it; it would take very little other evidence.

Q. In cases, Doctor, where the monomania is not so marked and fully developed, cases which are a little obscure and doubtful, in this

case is it possible to determine whether there is a disorder of the intellect or not, without a knowledge of the antecedents of the person, the general condition of his mind, and the accompaniments of this apparent monomania?

A. Well, yes; I think you can. There are other cases where you might have difficulties in arriving at conclusions. Some of the cases are very obscure, and it is very hard to find them at all.

Q. Well, isn't it very difficult sometimes to determine whether the case is one of monomania or simply mere eccentricity?

A. Well, no; I do not think there is much trouble about that.

Q. Not much difficulty in distinguishing between the two?

A. I should not think there would be a great deal; eccentricity comes out of a sound mind; the others out of an unsound mind.

Q. Can there be such a thing, Doctor, as an entire absence of reason upon one subject or class of subjects, where the mind remains in full vigor in regard to all other matters?

A. Is that the question?

Q. Yes, sir.

A. Well, that question is generally answered thus: I suppose probably pretty near the truth; but I cannot well conceive of one part of the mind being injured without its having some effect, you say entire?

Q. Yes, sir.

A. I object to that word. It would be good enough for him to go about and transact his business; everything of that sort, but I would not regard that as being entire at all.

Q. How far, Doctor, could the case of the patient complained of in the case stated, be attributed to the effects of medicine, if he was taking a large quantity and variety of medicines?

A. Well, I suppose medicine would hardly have any effect upon him—any such effect as that. A man sometimes gets a little flighty from the effect of opium, but it ain't anything like mental disorder at all; it is temporary and passes off; it don't amount to anything.

Q. When you use the term insanity and unsoundness of mind generally, they are to embrace all the different forms and degrees of mental unsoundness, I suppose.

A. Well, that is the ordinary way of defining insanity. It is a generic name.

Q. Belongs to all cases of mental unsoundness?

A. Each and every one.

EDWIN BENTLEY, called for Contestant. Sworn.

*Examined by MR. BARNES*—Q. What is your occupation?

A. A medical officer of the army; practice of medicine and surgery.

Q. How long have you been engaged in the practice of medicine?

A. About twenty years.

Q. Have you attended the Court during the progress of this trial?

A. Yes, sir; I have, sir.

Q. Did you hear the hypothetical question, as it is called, put by me to the other medical witnesses?

A. I did, sir.

Q. Have you the facts there stated now present in your mind?

A. I do not know that I have them all distinctly in my mind now, but I heard the question read, and I can answer it now as I would have answered it when it was distinctly in my mind.

Q. Assuming the facts stated in that question to be true—

MR. PRATT—[Interrupting.] When did you hear the question stated, Doctor?

A. I think it was day before yesterday, if I recollect.

MR. BARNES—Q. Assuming the facts stated in that question, or proposed case, to be true, what should you say was the condition of the person described in that question with reference to being of sound or unsound mind?

A. My opinion was, that such a man had an unsound mind.

Q. Is that your present opinion?

A. That is my present opinion.

Q. To what particular class or subdivision of the generic term insane should you assign it?

A. It would be assigned, I believe, to the class of monomanias—monomania.

*Cross-Examination* by MR. PRATT—Q. Upon that hypothetical case, Doctor, upon what subject would you pronounce the patient a monomaniac?

A. It would be various subjects. His suspicions would be one thing, in regard to the conduct of his wife his fear of being assassinated; his fear of being poisoned; his exaltation in regard to himself, and his ideas of posthumous fame, and many others that I cannot name or recall at this moment.

Q. Do you mean to say that he would be a monomaniac upon each of these subjects?

A. I mean to say that a monomaniac may have the expression of his peculiar notions upon an endless variety of things.

Q. Which bear no relation to one another?

A. There may be a number of relations that are not traced by those who examine him.

Q. When he had reached that condition in which he seemed to be a monomaniac upon an endless variety of subjects, as you express it—

A. I do not say that he was so. I say a monomaniac is capable of giving expression to his monomania upon an endless variety of things. The expression may vent itself in any direction at any time.

Q. When the insanity manifests itself upon an endless variety of different subjects, would not it be a case of general insanity rather than monomania?

A. If it was a case of general insanity, then we would understand that the powers of the mind—he would lose the entire control of his will, he would then be a general monomaniac. While he is a monomaniac, he is supposed to have his senses to a greater extent upon certain subjects. He may be rational—he is believed to be rational upon certain subjects—even more rational than other individuals, or seems to have a better understanding of them.

Q. Could a person, Doctor, be entirely insane—what you would call entirely insane upon one subject, and wholly rational upon all others?

A. Well, perhaps; if I can make myself intelligible in regard to that. I don't think that a man who is a monomaniac has a properly balanced mind, although upon particular subjects he may be remarkably sensible, more so than ordinary individuals, upon particular subjects. For example, if I might state a case to make myself better understood: I have known a mathematician a real monomaniac, that

could compute numbers more accurately and more rapidly, to a greater extent, than any one individual that I have ever seen. Although I do not think the man's mind was really well balanced; what you would call a real healthy mind.

Q. Are there any degrees in monomania?

A. Yes, sir; oh, yes, a very great many of them.

Q. Well, I understand your idea then, that a man could not be entirely destitute of reason upon one subject, and still retain his reasoning faculties upon all others?

A. You ask me if I think a man could be a monomaniac on a single subject, and retain the full power of his reasoning on all other subjects?

Q. That was not the question. If he could be entirely destitute of reason on a given subject, and retain the full exercise of his powers on other subjects?

A. I think so. I did not comprehend the question at first.

Q. But there are degrees in insanity, in monomania, the same as in general insanity?

A. Yes, sir; I think so.

Q. But when you say in answer to the case stated by Mr. Barnes, that you think the patient was insane, or of unsound mind, you use the terms in the general and comprehensive sense, the generic sense, including all grades and classes of diseases of insanity?

A. I do, sir.

Q. Is not there, Doctor, almost every conceivable degree of monomania, from that which just barely amounts to disordered intellect on a subject, down to an absurd loss of reason?

A. I think there is, sir.

Q. Have you ever made an especial study of insanity; has it ever been a specialty with you?

A. Not to the exclusion of everything else; I have for a length of time had more or less to do with insane individuals.

Q. How would you determine—what would be the test, Doctor, if you were called upon to tell whether a patient was a monomaniac or not; what would be the decisive test?

A. If I found the patient possessed a delusion upon anything, I should think it would constitute monomania upon that subject.

Q. If you found a delusion simply; you don't mean by that, that if you found him entertaining an erroneous opinion simply?

A. Perhaps I don't make myself well understood in regard to the matter of delusion. I understood delusion to embrace various classes that might be comprehended in the terms illusion or hallucination. I suppose any sane individual might have an illusion or hallucination, but he would not believe it. If the man believed those things, it would be a delusion; when it got to be a delusion, it would embrace those ideas as I understand it. That is my impression. What I mean to say is, for example, a man having some little evidence of a certain thing, might make a great deal more out of it than really existed, constituting, I suppose, what is supposed to be an illusion. If he was convinced really, that there was not anything, that it was in his imagination. There is a certain class of individuals who see things we cannot see. That I understand is an hallucination, and therefore it is not a delusion; but if the case be a delusion, he believes it. For example: I should imagine that I saw pictures, a great variety of beautiful pictures hanging along the ceiling; if I knew they were not,



I should be sane. If I came to believe that thing, it would be a delusion. In that sense I understand delusion, real delusion, constitutes a symptom of monomania.

Q. Well, the illustration which you give, pictures hanging on the wall, that is a case where there is no evidence at all to support your delusion?

A. No, sir.

Q. That is what you understand by delusion?

A. No evidence to support it. And in the matter of delusion—I would include those both. In illusion there might be some slight thing to sustain the delusion. I might look at and see a cloud floating over, for instance; there are individuals who could see in that cloud various things; perhaps see a large army of men in that cloud. Well, if he can see, or if he knew that no such thing could exist, it would simply be illusion, and would not disturb anybody; but if he came really to believe it and undertook to make me believe it, though he might have the slight evidence of there being a cloud, I should believe that that man was insane—laboring under a delusion.

Q. That is what you understand?

A. That is what I would understand. I may be mistaken about that. That is my impression of the facts.

Q. I wholly agree with you, Doctor; two of us agree. When you answer generally, upon the case stated, the individual was of unsound mind, it is upon the basis that these acts were habitual with him?

A. Yes, sir.

Q. All of the bursts of passion and fury recited in the cases stated, might be the result of a violent temper, which had been unrestrained for a series of years, nervous and debilitated, without their having necessarily disturbed intellectual faculties?

A. Do you mean in the case that I have heard you state, or in this hypothetical case that has been stated.

Q. I say that all those bursts of passion, stopping with that alone, and anger recited in the case stated by Mr. Barnes, might be the result of a violent and very bad temper, nervous irritation, without necessarily involving a disturbance of the reasoning powers?

A. While a man allows himself to be so excitable, it appears to me the brain is not what would be considered a well-balanced, healthy brain, and though I might conceive that a man might get into a great burst of passion, without being insane, if he would act as a sane man afterwards, he would make an explanation. I don't understand in the cases as cited, there was any explanation. The man persisted, as though he believed all he was saying.

Q. Leaving that fact, whether it was or not entirely out of the question, taking the case simply as I stated, could such bursts of passion result from such causes, without necessarily involving a serious disturbance of the intellectual faculties?

A. Not if habitual. If it was a single instance, it would be more reasonable. Its becoming so habitual, I scarcely can conceive it, without an impairment of the mind.

Q. If that occurred once without disturbance of the intellectual faculties, it might occur again in the same way.

A. I think it is usually for most men, that understand the ordinary courtesies of society, if they should so far forget themselves, as to burst out in one of these extreme rages of passion, they would imme-



diately attempt, when they regained soundness—that is, regained reason—to make some restitution to those individuals that they had slandered or wronged. I don't see anything of that, sir, in this case, and that is the reason that I feel that it is an evidence of insanity.

Q. Well, if it did exist, and was shown to you, would that change your opinion upon that point?

A. It would modify it to some extent.

Q. Is it not sometimes, Doctor, exceedingly difficult to determine where eccentricity leaves off, and insanity begins?

A. I think sometimes it is; that is my impression.

Q. If you were called, then, to determine the question whether a stranger to you was a monomaniac or not, and you found that there had been all through his life great general eccentricity, that fact in an obscure case would weigh very much with you, would it not, in determining his monomania?

A. It would; and then it would be subject to certain considerations. While I would have to consider the eccentricities of the man as an argument weighing in favor of this being only eccentricity, I would have to remember that this peculiarity that eccentric individuals are particularly liable to take the same form of mania. Both of these things would have its weight with me.

Q. Suppose the acts themselves, which seemed to constitute his monomania, were just such things as would be expected rationally of an individual where there was any suspicion whatever of insanity, while he was in perfect health, would you then find it very difficult to determine?

A. I would consider it difficult to determine, and should have to investigate the cause, bringing everything to bear that I might be able.

Q. Is it not an exceedingly difficult and delicate matter sometimes, Doctor, to determine where a mere absurd and unreasonable error of judgment stops, and delusion or a deluded opinion commences?

A. It might be in some cases. There might be such a case as would require more particular investigation to make it out even then, it might be so obscure as not to be very clear to your mind.

Q. For instance, where the opinion itself is within the ordinary range of human experience and human affairs, not irregular in itself at all, but quite possible, and even probable, and whether the fact existed or not, depends upon a very great variety of other facts and evidence in that case?

A. In that case I should want to “investigate the case,” as we say, and take up the history of the whole affair relating to the man, unless I should find in the course of the investigation that something should appear satisfactory. But in answer to your question directly, I should need to investigate the case in order to satisfy my mind that it was insanity.

Q. If, during the time of the occurrences complained of, the patient was under medical treatment, taking large quantities and varieties of medicine, that I suppose would weigh with you in determining?

A. It would weigh so much as this: If there was nothing particularly marked about it, I might hesitate in my opinion until I would know the man was over the influence of the medicines; that is, I should know that at the moment of my examination he was not under the influence of any particular medicinal agent.

Q. Monomania is simply a diseased state of the mind upon a particular subject, is it not?

A. Or class of subjects.

Q. If the monomania exists in regard to more than one subject, they must be all cognate or connected subjects—bear some relation to one another?

A. I don't understand that that absolutely follows. It might be in the mind of the subject of the monomaniac. He might see the connection to some one of these subjects which the examiner might not see. He might associate them with one, or two or three, or half a dozen, as the case might be. He might in some way link them together.

Q. Do you think there could be monomania in the same patient, upon the subject of religion and at the same time upon the subject of his family? That is, would there be two distinct monomanias in the same patient? Could there be?

A. Monomaniacs are more liable to have some disturbance on the subject of religion. That is usually an affliction thrown in more often than otherwise, so far as I know. They have their own peculiar notions about religion. Unless they were excessive they would not perhaps have so much weight with me as with some individuals.

Q. Suppose, Doctor, that the intellectual disturbance manifests itself in about the same degree and all about the same instant, upon three or four subjects which were entirely disconnected and not related to one another?

A. I understand that might exist in the mind of a monomaniac.

Q. Would the patient be a monomaniac upon each subject, or if not, how would you determine upon which subject he was particularly a monomaniac, if equally disturbed upon another distinct and different one?

A. Well, there is usually a principal one upon which he seems to be most exercised, which one takes the lead. If he was especially and particularly suspicious he might be classed with the monomaniacs of suspicion. It is hardly possible to make a detailed and complete statement as to every condition of the mind that might exist. The object of classification is not expected to cover everything, but to assist the mind in approaching something.

Q. Doctor, does not the case, as stated by Mr. Barnes, bear as much resemblance to moral insanity as it is classified by the works, as it does to monomania?

A. I think that that case would be diagnosed, although there might be some prevailing ideas connected with it in regard to the moral sentiments—I should feel if I had diagnosed the case as one of monomania, that it would be confirmed by any one who might be at all familiar with the disease.

Q. What is the feature which particularly distinguishes moral insanity from monomania?

A. Those feelings which may gush out in regard to the passions, and in regard to religion, and various forms of hypochondria and nostalgia.

THOMAS BENNETT, called for Contestant. Sworn.

*Examined by MR. BARNES.*—Q. You are a physician and a surgeon, I believe, sir?

A. Yes, sir.

Q. How long have you been engaged in the practice of your profession, Doctor?

A. About thirty years.

Q. Did you hear the hypothetical case that I put to Dr. Shurtliff, and to the other medical witnesses who followed him?

A. I did, sir..

Q. Are you familiar with the facts stated in that question, and have you them now in your mind, perfectly? Assuming the facts stated in that proposition to be true, what is your opinion, as to the condition of the person therein described, with reference to soundness or unsoundness of mind?

A. That he was a person of unsound mind.

Q. To what particular grade, or class, or subdivision of insanity, should you assign that case?

A. There is a system of classifying these diseases of the mind into monomania, etc., but recent physiologists divide them differently. They speak of partial and entire intellectual insanity or sanity. This I should call a case of partial intellectual insanity. By "partial," I mean not as regards insanity, but in degree.

*Cross-Examination, by MR. PRATT.*—Q. You would regard it, then, as a degree of insanity? Would that express your idea?

A. No, not a degree of insanity. Partial insanity, as in contradistinction from entire insanity—general insanity.

Q. Partial insanity?

A. Partial insanity as contra-distinguished from entire insanity, or monomania, if you like.

Q. Do you use those as equivalent terms?

A. Not entirely as equivalent terms. It has been found that the term monomania does not cover the ground; still it is used in lieu of a better word.

Q. Well, what is the distinction, Doctor, if you can so illustrate it to the jury, between what would be generally called monomania and what you now designate as partial insanity.

A. There would be no difference only in extent. What I mean by monomania is, where the person has one insane delusion, and one alone; that is strictly monomania. But a person may be insane on some subjects, and not insane on all; and that is what I call partial insanity.

Q. Well, in this case then, or in the case as stated by Mr. Barnes—if I get your idea—you find a disordered mind upon several apparently different subjects?

A. Yes, sir.

Q. And it is for that reason that you in a measure distinguish it from monomania, that being confined to one subject?

A. That is the reason that I distinguished it from monomania, that being confined to one subject. It is not in practice confined to one, but there seems to have been a great deal of argument about this monomania being distributed to other subjects for the purpose of classification of disease.

Q. Then without using the terms for the purpose of classifying it, would you say in the case stated by Mr. Barnes that he manifested a disordered state of mind on several subjects?

A. Yes, sir.

Q. There has been a great deal said, Doctor, about a man being insane upon one subject, and entirely rational upon others. Could there be such a thing as insanity upon one subject and sanity upon all others?

A. Oh, yes, sir; the records of disease are numerous of cases of that sort.

Q. Doctor, suppose a man to have had fixed ideas upon some particular subject from his earliest life; later in life there is an evident disorder of the intellectual faculties on some subjects, and he still adheres to his preconceived ideas and notions of that one subject, and finally carries out the idea that he embraces in thought. Would not you regard him as being rational upon that one subject?

A. Your question is, that it was a rational subject, and he never changed from it?

Q. Exactly.

A. Certainly; it never become irrational because he became irrational.

Q. When you answered Mr. Barnes generally, upon his hypothetical case, it has been the supposition that the things complained of and recited were habitual with the individual?

A. Yes, sir; I think it was so stated in the hypothesis.

Q. Now, suppose, Doctor, that instead of being habitual, those outbursts of passion only occurred occasionally, in the aggregate half a dozen times, and at a time when the patient was exceedingly feeble in health, nervous and irritable, in the midst of some controversy with some individual, would you, upon that state of facts alone, consider this outburst of passion any striking evidence of insanity?

A. Yes, sir; but that was not the hypothetical case.

Q. Not as he stated it. I put one now?

A. No; if a man were insane once, he would be insane, of course, no matter how long the insanity might last, he would be insane. If he got sound afterwards, it would be another thing.

Q. We are trying to know whether he is insane or not?

A. You are assuming he is insane.

Q. Certainly?

A. If you put the case where a man is not insane, I cannot make him so.

Q. The object is to ascertain that. You say this: You answered Mr. Barnes upon the hypothesis or ground that these acts were habitual. Now, I say, suppose that these acts instead of being habitual had only occurred occasionally?

A. I don't say that he was insane upon a burst of passion.

Q. What I mean to ask you is, whether this outburst of passion might occur without insanity, occasionally?

A. Oh! yes; the bursts of passion might.

Q. When you speak of insanity or unsoundness of mind, I suppose, like the rest of them, you use it as a generic term, to include all the degrees and different forms of insanity?

A. Yes, sir.

Q. Well, there is a great variety of grades in monomania, is there not, Doctor?

A. Oh, yes, sir,

Q. As only other forms of insanity?

A. Yes, sir.

Q. That is to say, the mind may be very slightly disturbed on that particular subject, or the reasoning faculties upon that particular subject may be annihilated?

A. Yes, sir.

Q. You never would pronounce a patient insane, Doctor, I suppose, until you found at least there was a fixed delusion upon some subject in the mind of the patient?

A. I should not.

Q. Is not it exceedingly difficult sometimes to tell, to determine, in fact, whether it is a delusion, or simply an unreasonable error of opinion or judgment?

A. Well, if you can bring reason to bear on the mind, and convince him that his idea is a delusion, of course, it is not insanity. If, by reason you can't, and he maintains his same opinion, contrary to reason, of course it is insanity.

Q. It amounts to a delusion, then, when a false idea cannot be removed by evidence and reason?

A. Yes, sir.

Q. But a man may draw a wrong conclusion of a fact from testimony, and against a considerable preponderance of testimony, without necessarily involving insanity?

A. Yes, sir; I suppose so.

Q. What do you recognize, Doctor, as a marked distinction between what is usually called eccentricity and insanity—unsoundness of mind?

A. A man may have very eccentric habits, and yet his mind may be sound. Usually a person of eccentric habits, may be approached—may be convinced of his eccentricity, and may acknowledge it. But a person with a fixed delusion, of course, is unamenable entirely to reason upon that subject.

Q. Well, in numbers of cases, or cases that are a little doubtful, it is a little hard isn't it, to determine sometimes whether it is an eccentricity, or whether it amounts to a delusion of insanity, rather?

A. It may be somewhat difficult, without taking the pains and trouble to investigate the matter.

Q. If you were called for the purpose of determining whether a stranger to you was insane or not, and you found that upon inquiry, that the man had been a great general eccentricity through life, and when there was no question of disordered faculties, that fact would weigh very materially, I suppose, in determining the question?

A. Oh, yes, sir, it would.

Q. And if you found that the man all through his life from childhood, and from youth up, had steadily adhered to certain ideas and facts upon a particular subject, you would consider him rational upon that subject, although he might manifest disorder of the intellect upon other subjects?

A. Yes, sir. We had that question presented before.

Q. Yes, Doctor, I think we did; I guess you are right. Does the mere fact, Doctor, that a person entertains a deluded opinion—I mean anything that you call a deluded opinion, without what is called hallucination, is it insanity?

A. Well, I don't know that I used the term "deluded opinion." I spoke of "delusion" and "fixed delusion." What is the question?

Q. Suppose there is a fixed delusion in the mind upon some subject, but there is no hallucination whatever? Is that fixed delusion alone—does it alone constitute insanity?

A. Most undoubtedly.

Q. Can you reliably, Doctor, determine the existence of mono-

mania without any knowledge whatever of the mental faculties or general condition of the mind—without any knowledge of the antecedents of the patient?

A. Oh yes, sir; perfectly well. I once knew a man who imagined himself the prophet Elijah, and yet he was a perfectly sane man. I know he was a monomaniac.

Q. In that class of cases you would pronounce at once, where the delusion was impossible and absurd in itself—of course that would be evidence of insanity. How do you regard the fact, Doctor, that a very old man, one very sick and feeble, and occupied with business, his mind intently engaged—

MR. BARNES—[Interrupting.] What do you mean by a very old man, Mr. Pratt? He was fifty-seven years old. Do you call that an old man? You are most that yourself.

MR. PRATT—Q. Suppose, then, Doctor, a man fifty-seven years of age, very feeble, very nervous, very much occupied mentally, with winding up his mental affairs, should be careless and indifferent about the exposure of his person in the presence of those who were waiting upon him; would that single fact alone indicate insanity?

A. Well, no; I don't suppose it would. He would not be a very decent man. People don't do that.

Q. It would indicate a vulgar mind or indecency rather than insanity? Doctor, would the fact that a man was exceedingly profane at times, particularly when in a transport of rage—would that fact alone be any evidence of disordered mental faculties?

A. No, sir.

Q. Suppose a man who was naturally exceedingly vain, egotistical and self-opinionated, impatient of all contradiction and opposition—a man of nervous temperament naturally, then becoming feeble and still more nervous and irritable, would you consider it any evidence of insanity that he fell into a passion under such circumstances, and denounced individuals who contended with him about matters that he thought he was right about, and on which he was very sensitive?

A. That of itself would be no evidence of insanity.

Q. That would simply be evidence of a profane and hard temper, and disposition, I suppose?

A. Yes, sir.

Q. There is a very material distinction, is there not, between a total non-action of the reasoning faculties—a reasoning, but doing it so inaccurately and illogically—what I mean to say is, the difference can be very readily seen in the patient?

A. There is a difference, of course, between entire insanity and partial insanity.

Q. That expresses the same idea. Now, Doctor, about this thing—about a man's suspicions and jealousy. Would a very absurd and unreasonable jealousy of a man's wife exist without involving disorder of the mental powers?

A. Not to a sound mind.

Q. If you found that an individual who became excessively jealous without sufficient cause, you would pronounce him of disordered intellect?

A. I certainly should—especially if it had been shown that there was no cause.

Q. I will state a general question, Doctor, for the purpose of getting your idea generally. You speak of delusions; do you make any



distinction between a feeling which is impossible or totally unreasonable in itself, and one rational in itself, having the elements of probability, but unsupported by evidence sufficient to convince?

A. Both of them are the actions of an unsound mind—beliefs of an unsound mind. Both of them may, and both do exist in the mind of insane people.

Q. Well, you would admit, I suppose, that a man from a given state of facts would arrive at a very different conclusion from what you would arrive at, and persist in that without being insane, if the facts were in conflict. Suppose there is a mass of evidence and facts here apparently in conflict. You are convinced and come to a conclusion, and somebody else weighs those facts and comes to a directly opposite conclusion. You would not for that reason alone say that a jurymen was insane?

A. Presuming that I had sufficient evidence in my own reason, and knew that I was right, I should say that man was certainly unsound. I could not come to any other conclusion.

Q. Do you of your profession always agree with each other?

A. Do you of yours?

Q. I am satisfied with that answer. You say that if you was absolutely certain that you was right, Doctor, you would pronounce another man insane who reached a different conclusion. But how could you know that you was absolutely right?

A. If I had evidence in my own reasoning powers—and if I had not, I would not be able to give an opinion—if I did give an opinion, I should say he was insane.

Q. Simply because he reached a different conclusion from yourself, upon a given state of facts?

A. Simply because I believed my opinion was reason, and his was not.

Q. Then, would you mean to say if there was no evidence, or no reasonable evidence—

A. [Interrupting.] I understood you to say there was evidence, and I was reasoning on that evidence.

Q. Yes; I say, suppose the conclusion rests upon a given state of facts, and those facts were in conflict apparently, a part of them tending to produce one conclusion—

A. [Interrupting.] Oh, in a conflict of the facts you could have no conclusion. You must get your facts right, or you can't have a conclusion.

Q. Well, take this very case, Doctor, before the jury. There is a vast amount of testimony. The jury have got to find a verdict upon that testimony. Now, if the jury should reach a conclusion different from the one which you would reach, you would not regard that as any evidence of insanity on the part of the jurors?

A. No, I certainly should not.

Q. Now, Doctor, suppose that the facts are settled, and agreed upon, and an individual from that draws a conclusion or inference different from the one which you draw, would you pronounce that act an evidence of disordered intellect?

A. The question is so vague. If you put a case, I can answer it. You might ask me whether I thought two and two would make four, two and two and a half; another man might say yes, he does, and I might say no, I don't. Give me a definite case—something to go upon.

Put the case, of course, I can't say a man is insane just because he differs from me.

Q. That is the answer to my question, Doctor. Did you know Horace Hawes in his lifetime?

A. I did, sir.

Q. Did you ever attend him professionally?

A. I did, sir.

Q. How long, and when were you his professional adviser?

A. Well, I can't, I don't remember the dates. I saw him, I think, one or two,—I saw him on three different occasions, one visit each time. He would send for me, and he would go into his case in detail very lengthily; he would hear what I had to say, and then he would say he would have nothing to do with me, and he would sign a duplicate receipt and send me the money; and I would not go again until he would send again, and the same thing was gone through.

Q. Was that, Doctor, his last sickness?

A. Yes, sir; one was during his last sickness.

Q. Did you make a careful diagnosis of his physical condition, his disease?

A. I did, sir.

Q. About how long before his death, Doctor, was your last visit?

A. I don't think it could have been more than a week or two.

Q. Did you have at that visit some considerable conversation with him?

A. Yes, I had considerable conversation with him then.

Q. Upon any other subject than his disease—his physical condition?

A. He told me of his sufferings, his starvation and so on; yes.

Q. Did you, from your observation—what you saw of him upon the whole at that time, form any opinion as to his insanity or sanity?

A. I simply spoke to him about his physical condition, and my examination of him fatigued him a good deal and I left. I examined his chest physically, and that tired him a good deal; because he wished that—not that it was necessary at all, but he required it and I did it.

Q. Well, was there anything in his conduct or appearance or what he said which indicated to you, or left the impression upon your mind that he was an insane man?

A. No, sir.

*Re-direct Examination* by Mr. BARNES—Q. Doctor, the last time you was there, did he say anything to you in relation to the length of time you thought he could live?

A. I don't remember, sir.

Q. During these visits that you made to him, your conversation was directed wholly to his physical condition?

A. Solely to that.

Q. You did not talk to him on the subject of his posthumous fame?

A. I talked about nothing more than his condition.

Q. Nor his family?

A. Nor his family.

Q. Did you ever prescribe anything for him?

A. Yes, sir.

Q. What did you find after you had prescribed for him that he did?

A. He told me the next visit he had not taken the medicine that I prescribed, nor would he.

Q. Why not?

A. He did not choose; he did not think I knew anything about it, and he would not take it.

Q. Did you ever see any manifestation of temper in him, or did anything occur while you were there to call out his temper at all—any expression of temper?

A. Well, I remember once his wife came into the room, and he abruptly ordered her out.

Q. What did he say to her?

A. "Go out!"

Q. What was his manner and appearance toward her, when you saw them together?

A. I only just saw them in a very transitory way—in that way. She just came into the room and I just left.

Q. What was his manner and demeanor towards her?

A. Very abrupt. He spoke in an abrupt way, ordering her out.

Q. Is that all he said to her?

A. Yes, sir.

Q. What did she do?

A. Walked out.

Q. Was there anything going on in the room at the time, which necessitated her absence, or made it improper for her to be present, as a wife?

A. Not at all, sir.

Q. You say his manner was very abrupt? Did you mean anything more than simply it was curt?

A. He spoke in a short, curt, sententious way to her—abrupt way.

Q. Did his manner evince any feeling toward her, of any kind?

A. A very ill feeling, I thought.

Q. What was her manner?

A. She simply walked out.

Q. That was all there was of it?

A. Yes, sir.

Q. Did you ever see them together, before?

A. Yes, sir, I have seen them together, before.

Q. Where was that, and when?

A. I think she was present some two or three years ago, when I went to see young Horace, who was sick.

Q. Nothing particular occurred on that occasion, that excited your attention?

A. I don't remember anything particular.

Q. During his last sickness then, you saw him within a week or two of his death?

A. Yes, sir.

Q. During his last sickness, did you see them together at all, except on this occasion?

A. None, except on this occasion.

Q. Doctor, suppose you had seen and heard the things to which these witnesses testified to knowing, taking the testimony as you had heard it here, applying it not to his case—for I understand you to say

you have heard all the testimony in this case—suppose, in respect to another man than him, the same state of facts had appeared to your own observation, what should you have stated in reference to the mental condition of the man?

A. That he was decidedly insane.

MR. BARNES—I shall now offer in evidence the two documents referred to in the will so-called, and described in the will as a deed of conveyance and foundation, bearing date October 31, 1870, made by the deceased to Albert Dibblee and others, for Mission Block 44, in the City and County of San Francisco, State of California, marked Exhibit No. 6.

Also, a deed of conveyance and foundation, bearing date 24th February, 1871, by the deceased to Horatio Stebbins and others, for Redwood Farm and other property, for the establishment and maintenance of an Institution of learning, the same to be called Mont Eagle University, and marked Exhibit No. 7.

[Here the Contestant rests. The case was continued till to-morrow morning at 10 o'clock.]

## ELEVENTH DAY.

SATURDAY, NOVEMBER 25th, 1871.

MRS. CAROLINE HAWES, called for Opponents. Sworn.

MR. BARNES—I would like to have the gentleman announce for whom he calls this witness.

THE COURT—The presumption is, unless something is stated, that she is called as against any person who maintains the validity of the will.

MR. BARNES—As against any person who maintains the validity of the will?

THE COURT—Yes, sir.

MR. BARNES—Then she is our witness. I do not call her.

THE COURT—You do not maintain the validity of the will.

MR. BARNES—You say the presumption is, she is called against those who maintain the validity of the will.

THE COURT—Then I mean the other way.

MR. PRATT—She is called for the Executor and for all.

THE COURT—On behalf of those who maintain the validity of the will.

MR. BARNES—Mr. Pratt, I understand, represents nobody but Professor Evans. The Executor does not call her.

THE COURT—They can say so. Do you call her? Mr. Sawyer represents the same side that you do. He is against the validity of the will.

MR. BARNES—He is appointed to represent the minor heirs.

MR. BARTLETT—Mr. Baldwin is on the side of the heirs.

MR. BALDWIN—So far as the parties I represent, I would like to hear Mrs. Hawes' version upon some of the matters.

MR. KENNEDY—I do not make any objection to calling Mrs. Hawes. I do not call her myself on behalf of the Executor, but I enter no objection to their calling Mrs. Hawes.

MR. PRATT—[To the witness.]—Q. When did you first become acquainted with Mr. Hawes?

A. I think it was in April or May, 1855.

Q. When were you married to him?

A. The twenty-fourth of May, 1858.

Q. How did you first become acquainted with him?

MR. BARNES—I object to that.

MR. BARNES—Wait a moment; when I object do not answer. I object to the question as irrelevant and immaterial. I do not suppose we are to have the history of the courtship in this case. The fact is that it culminated in marriage, that is enough.

THE COURT—I sustain the objection.

MR. PRATT—About how many times had you met Mr. Hawes prior to your marriage?

MR. BARNES—I object to that.

A. About five hundred.

MR. BARNES—Do not answer. I know you are willing to tell him everything he wants to know, but I don't want you to tell him anything but what is proper and relevant to this case. I object on the ground that it is irrelevant and immaterial.

THE COURT—She has already answered it. She said about five hundred times, I think.

MR. BARNES—I move to strike it out.

THE COURT—[After argument.] I understand that is introductory.

MR. PRATT—Was he then reputed to be a man of wealth?

MR. BARNES—I object to the question.

THE COURT—She can answer the question.

MR. BARNES—Note an exception.

A. Not to me. I didn't know anything about his wealth.

MR. PRATT—You did not know anything about his financial condition?

A. No, sir; I did not.

Q. Where have you resided since your marriage with Mr. Hawes?

A. In San Mateo County, a part of the time; in San Francisco, a part of the time; and a part of the time we were boarding, a month or two months, I think, in Santa Clara.

Q. During what portion of that time did you live apart and separate from Mr. Hawes?

A. I never lived apart and separate from Mr. Hawes.

Q. You never have?

A. Never; I didn't consider so.

Q. Was there a portion of the time that he resided on Mission street and you at Redwood?

A. No, sir.

Q. There was not?

A. No, sir.

Q. On Folsom street, I mean.

A. He came in to attend to his business and would stay probably a week or two, and come back to the ranch, and I would sometimes go to the city.

Q. About what was the longest period that he remained here on Folsom street and you at Redwood at one time?

MR. BARNES—I object to that, as irrelevant and immaterial.

THE COURT—I sustain the objection.

MR. PRATT—When did Mr. Hawes first begin to treat you unkindly?

A. Well, I don't know what you would call unkindly, but soon after we were married.

Q. In what did that unkindness consist?

A. Well, in scolding me for matters that I didn't know that I was blameable for.

Q. Did that unkindness continue, that method of treatment, down to about the time of his death?

A. Yes, sir.

Q. When did Mr. Hawes first speak to you about his intention to found and establish any public institution?

MR. BARNES—I object to that, as irrelevant and immaterial, and not in issue in this case, at all.

THE COURT—I overrule the objection.

MR. BARNES—Note an exception.

A. I think it was about—he has talked of such things since 1862 or 1863, about Redwood Farm having a school that he spoke of building on Eagle Hill. He then said he thought it would make a fine site for a college, but he didn't know but what he would give Redwood Farm for that.

MR. PRATT—Q. In 1862 or '63?

A. I think it was 1862 or '63, he spoke of those things, about Redwood Farm.

Q. How many times did he talk to you upon that subject in his lifetime?

MR. BARNES—I object to that, as irrelevant and immaterial.

THE COURT—I overrule the objection.

MR. BARNES—I except.

A. I don't know; I never counted.

MR. PRATT—Can you approximate? Was it fifty times, or ten?

A. No, sir. I don't think anything about it, for I didn't take note of it at the time.

Q. When did he last speak to you on that subject?

MR. BARNES—I object to that, as irrelevant and immaterial.

THE COURT—I overrule the objection.

MR. BARNES—I except.

A. I think it was the evening that the deed of foundation of Mont Eagle University, was printed in the "Bulletin." I think that was the last time that he spoke to me.

Q. About how long was that prior to his death?

A. I think it was on the 8th or 9th—7th, 8th, or 9th of March, I forget which. It was Tuesday evening or Wednesday evening, of that week.

A JUROR—Q. March, before his death?

A. Yes, sir; he died on the 12th of March.

MR. PRATT—Q. Did you, on any occasion, when he was talking with you on that subject, protest against it?

A. No, sir.

MR. BARNES—I object—well, you have answered; no matter now.

MR. PRATT—Did you ever expressly consent to it?

A. No, sir.

Q. Did he ever consult with you about what provision should be made for you by his will, or otherwise?



A. Not by his will.

Q. Did he ever tell you what provision he intended to make by his will?

MR. BARNES—I object. The instrument speaks for itself.

THE COURT—I sustain the objection.

MR. PRATT—When did he first speak to you upon the subject of his will?

MR. BARNES—I object to that as immaterial and irrelevant.

THE COURT—[After argument.] I will sustain the objection to the question immediately preceding that—that a married woman is never estoppel except the law makes some provision where she can bind herself by declarations. In the case of matters of this sort the consent of the wife would not be material as a fact to change the rights of the parties at all.

MR. PRATT—Not at all. It is not on that basis at all.

THE COURT—It may have that effect upon the minds of the jury. Having that effect to some extent, I consider the question improper, and for that reason overrule the preceding question on the same ground.

MR. PRATT—I don't know as I understand your Honor. I ask the witness when was her first conversation on that subject, and Mr. Barnes objected to that. Is that objection sustained?

THE COURT—Is that the question now before the Court?

MR. BARNES—He asked when Mr. Hawes first spoke on the subject.

THE COURT—That is the one I allude to; the one preceding that.

MR. PRATT—I asked her, did he ever consult with her about what provision should be made for her by his will.

THE COURT—I sustain the objection to that.

MR. PRATT—Note an exception to the ruling upon that question.

THE COURT—By the common law, a married woman is presumed to be controlled entirely by her husband, and her consent, her declaration can never be brought in as estoppel, and I sustain the objection to that question because it may have that effect on the minds of the jury.

MR. PRATT—We utterly disclaim that; but even if that were the case, your Honor, if it was still important as a circumstance to enable them to determine the sanity, I think the question is proper.

THE COURT—I do not see how it would throw any light upon that subject.

MR. PRATT—Now, the next question I propose to ask is, when was your first conversation with Mr. Hawes on the subject of his will?

MR. BARNES—I object to that as irrelevant and immaterial.

THE COURT—That embraces the same thing. I sustain the objection to that.

MR. PRATT—The Reporter will note an exception to the ruling of the Court. I will now ask the witness—I suppose the same objection will be made, but your Honor will bear with me a few moments—Did Mr. Hawes converse with you upon the subject of his last will and testament?

MR. BARNES—I object to that as irrelevant and immaterial.

THE COURT—The same ruling and exception.

MR. PRATT—I will now ask the witness one more question and then pass from that subject; that is, did he ever have any conversation with you on the subject of his last will and testament.

MR. BARNES—I object to that as irrelevant and immaterial. The question ought to have been the first one, and then the whole thing would have been disposed of. All the other questions assume facts

not proven; it is not worth while to note an objection on that ground.

MR. PRATT—Now, I will ask the witness if she ever said to him that she would prefer an annuity, a monthly allowance to a portion of his property?

MR. BARNES—I object to that, in the first place, on the ground that the question is leading and improper in form, and in the next place, that it is irrelevant and immaterial.

THE COURT—[After argument.] I think that question can be answered.

MR. BARNES—I object to it on the further ground that it is not evidence in rebuttal. I do not care about pressing that at the present time.

THE COURT—I think if it is proper at all, it is evidence in rebuttal in this case.

THE WITNESS—No, sir.

MR. PRATT—Q. Did you and Mr. Hawes ever consult or advise together about sending your son to Europe to be educated?

MR. BARNES—I object to that as irrelevant and immaterial.

THE COURT—I overrule the objection.

MR. BARNES—I except.

A. He made his arrangements to send my child to Europe before he ever said anything to me about it. I accidentally found it out without his telling me. He had made all his arrangements for that, and he sent my child away before I ever knew anything about it.

MR. BARNES—Q. What was the latter part of your answer?

A. I accidentally found it out by going into his room and finding on the table that there had been an agreement made and signed between him and Professor Evans.

Q. When you spoke to him about it he refused to tell you anything about it; is that what you said?

A. Yes, sir; he didn't tell me anything about it.

MR. PRATT—Was that the only conversation you had on the subject?

A. I asked him if he was not going to let me see my child before he sent him out of the country. He led me to believe that I should, until he got all of his arrangements made, though that was only to lead me to this belief until he had finished his arrangements with Mr. Bartlett and Mr. Evans; and after that he telegraphed to those parties to go immediately out of the country, for fear that I would get to see the child.

MR. BARNES—Q. You did not see him?

A. I did not see him. I have not seen him for over two years.

MR. PRATT—Q. Did you ever yourself, express an unwillingness, or a desire either, that your son should be sent away for his education?

MR. BARNES—I object to that question, as to its form. The counsel has the witness on examination-in-chief. If it is competent at all, for him to go into that subject here, let him ask the witness what was said on that subject, and let us have it, but I object to that mode of examining the witness.

THE COURT—[After argument.] I think that would be a fair way of asking the question.

MR. PRATT—Q. What did you say to him upon that subject?

A. The subject of sending my child back to Europe?

Q. Yes.

A. Well, I objected to it, and I wrote to Mrs. Evans, as soon as I found it out, that it was a mystery to me, why these things were done

without my knowledge or consent, and as he had seen Mr. Hawes and knew that, in all probability, he would not live long, and if should outlive him, who had the best right to the children, they or I

Q. Was that all the conversation on the subject?

A. That is all that I remember about sending my children away only that I wanted him to see me, and I was led to believe that I should see him, and I was deceived in it.

Q. When did this occur?

A. That occurred in August.

Q. What year?

A. The first part of August, 1870.

Q. That was after his return from Europe?

A. Soon after.

Q. When did Mr. Hawes start for Europe?

A. On the 25th of September, 1869.

Q. Where did he leave you?

A. He left me standing on the wharf, here in San Francisco.

Q. I mean by that, where did he leave you to reside?

A. Anywhere I chose to go; I had means to pay for it.

Q. Where had you been residing, immediately prior to his departure?

A. At Redwood City, on the farm.

Q. He made no different arrangements for you?

A. He made no different arrangements for me, whatever.

Q. You were residing at Redwood, on the farm, when he went away?

A. I was there when he went away, except when he left me here on the wharf.

Q. In what condition did he leave the house on Mission street occupied or unoccupied—I mean Folsom street?

MR. BARNES—I object to that question, as irrelevant and immaterial.

THE COURT—[After argument.] I overrule the objection.

MR. BARNES—I except.

MR. PRATT—In what condition did he leave the house on Folsom street after he went to Europe—occupied or unoccupied?

A. It was occupied by his cousin.

Q. What was the name of his cousin?

A. William B. Hawes.

Q. How long did William B. Hawes remain there?

A. I think it was about a week after Mr. Hawes left.

Q. In what condition was the house when William B. Hawes left it?

A. You mean, whether it was clean or not?

Q. No; was it occupied or unoccupied?

A. It was occupied whenever I chose to go there with my night key and unlock it.

Q. By whom?

A. By no particular one after Mr. Hawes, except when I would go in myself.

Q. It was unoccupied, then, and locked up, except when you went and unlocked it?

A. I unlocked it.

Q. Was there any furniture in the house?

A. We wouldn't live in it without.

MR. BARNES—I object to that.

THE COURT—I overrule the objection. In all these overrulings the Reporter will note an exception whether counsel takes it or not, unless you want no exception to appear on record.

MR. BARNES—It might be that it is not desirable to cumber the record with exceptions in all these cases, and I would rather that we should make our own exceptions when we wish them entered.

MR. PRATT—Did you answer the question?

THE WITNESS—What was the question?

Q. Was there any furniture in the house?

A. There was.

Q. Was the house all furnished throughout?

A. We only occupied the wing of the house.

Q. Was that the only portion that was furnished?

A. That is all we had.

Q. Was the furniture left in that room when he went away?

A. It was. It is there yet.

Q. Was it there on his return?

A. It was.

Q. When did he return from Europe?

A. I think it was the 18th of July—the 17th or 18th of July, 1870.

Q. Did you, or did you not take away or sell any furniture during his absence?

A. I did.

Q. Where did you take that furniture from?

A. Out of the house on Folsom street.

Q. What kind of furniture was it?

A. It was parts or pieces of furniture, some that had been rented out to tenants for several years—different tenants.

Q. Parts of broken sets?

A. Yes, sir.

Q. Did you know at the time, whether or not, Mr. Hawes particularly prized any piece of that furniture?

A. Not a piece that I sold. He would not keep it. He threatened to burn it all up, any way, and I thought rather than burn it up, I would sell it.

Q. How much did you sell?

A. How many pieces?

Q. Yes, and what did you sell, as near as you can enumerate?

A. I sold one part of a painted pine set, green—one that he had before he was married, on the ranch.

Q. A bedroom set?

A. Yes, sir.

Q. One that he had before he was married?

A. I think he did. I cannot swear whether he had it before or after his marriage. It was from auction that he bought it, a part of it. He had it rented out before, and the tenants used it, and they burnt one of the tables up.

Q. What else?

A. Then there was another old bedstead.

Q. How long had he had that?

A. He had it about seven years; I went with him to buy it.

Q. Was there anything peculiar about it?

A. Nothing at all; a plain walnut bedstead.

Q. What else?

A. A part of a black hair cloth set.

Q. How long had he had that?

A. The same time he got the bedstead. I went with him to buy it, seven or eight years ago. It had been rented out all that time.

MR. BARNES—Q. It was furniture which had been rented out?

A. Yes, sir; to different tenants in the house.

MR. PRATT—Q. Anything else?

A. Nothing.

Q. That is all?

A. That is all.

Q. Did you sell any grain during his absence?

A. I did.

Q. How much?

A. One hundred sacks of wheat.

Q. Where was that grain when you sold it?

A. It was in our barn, on Redwood Farm.

Q. Did you, at any time after Mr. Hawes' return, deny to him that you had sold either the furniture or the grain?

A. Never.

Q. Let me refresh your memory a little.

A. I am willing.

Q. Do you recollect quite a serious disturbance and difficulty which took place at Redwood after Mr. Hawes' return, between Mr. Hawes and Mr. Livingstone—wasn't it Mr. Livingstone—

A. I don't know that he had any trouble with him.

MR. BARNES—I object to that. He has asked the witness and she has answered it.

MR. PRATT—Between Mr. Hawes and the man who has had charge of the place there, whatever his name was?

MR. BARNES—I object to that.

MR. PRATT—In the presence of Mr. Bartlett in regard to this sale of grain?

MR. BARNES—I object to that as irrelevant and immaterial. He has already asked the witness the question and got her answer. She is his witness.

THE COURT—[After argument.] Counsel has a right to refresh the witness' memory upon things of that sort. That is as far as the question goes. If it is for the purpose of contradicting the witness he cannot ask that question; but if after exhausting your means to refresh her memory she states a certain fact, that is as far as you can go.

MR. PRATT—Do you recollect that controversy and conversation?

A. About the wheat?

Q. Yes.

A. I know I went in to Mr. Hawes and told him that I took it and sold it to pay bills with. Some of the bills were in the hands of the collector; I didn't know what to do, and there were bills he had made when his own relations were with us; I did not feel disposed to take the money that he had left me, to pay them with; and I consulted a lawyer about it, the District Attorney and the County Judge, and others, to know whether it would be proper for me to do this, and they said I would be perfectly safe in doing it.

Q. Were those bills contracted by him before he went away?

A. Well, he was in the East at the time. He had left his relations here for me to take care of. He brought them out here in May, and

he went East, I think either the last of May or the first of June, and left those relations here and did not provide any means—he bought some few groceries before they arrived here, but no meat and vegetables; he left no means for that, of course; and I paid as far as I could with the means I had.

Q. The grain was sold then for the purpose of paying bills contracted during his absence?

A. Part of them were butcher bills and grocery bills, and dry goods bills furnished his sister, and presents for herself and children.

Q. Were any of them contracted before his departure and by him?

A. He never contracted the meat bills and vegetable bills or anything of the kind.

Q. Do you know about the amount of indebtedness contracted by you during his absence?

A. I think I do.

Q. About how much, Mrs. Hawes?

A. My own expenses?

Q. Well, debts contracted by you during his absence?

A. Paid or unpaid?

Q. Yes.

A. Well, I think altogether it would not come to over fifteen hundred dollars paid and unpaid.

Q. Was Mr. Hawes involved in any lawsuits in consequence of your contracting any of those bills?

A. I think there was a bill of forty-eight dollars in Redwood to Mr. Cooper.

Q. Was there more than one lawsuit?

MR. BARNES—What was that forty-eight dollars for?

A. Groceries.

Q. Give us the data of that bill more particularly.

A. Whom it was to, and what it was contracted for?

MR. PRATT—That bill of forty-eight dollars was for groceries, a debt contracted by you during his absence?

A. And part of it was before he went away.

Q. Was there more than one lawsuit as far as you know?

A. No, I don't know of any other.

Q. You only know of one?

A. That is all.

Q. Did Mr. Hawes ever accuse you of attempting or seeking to poison him?

A. Yes, sir.

Q. When was the first time?

A. I don't remember when the first time was. I remember it was oftener since he came back from Europe.

MR. BARNES—He did it oftener after he returned from Europe?

A. Yes, sir.

Q. He did it before and after?

A. Yes, sir.

MR. PRATT—How many times before he went to Europe?

A. I don't remember; it was often.

Q. What was the occasion of his making that accusation the first time—that is what I mean? What were the circumstances; what had occurred?



A. I don't remember.

Q. Can't you recall the circumstances, Mrs. Hawes?

A. No, sir.

Q. It did not create much impression on your mind at the time?

A. No, sir; because he did it so often without any cause that I didn't think anything about it.

Q. Do you remember the circumstances in regard to some mush which had a peculiar flavor or smell at one time when he accused you of trying to poison him?

A. I remember they had some little fuss among themselves—the girl and the nurse—and he called me up to know what I thought about it. I told them I thought they had put in soda instead of salt.

Q. Then there was something peculiar about the mush?

A. So far as I know; I didn't taste it.

Q. Did you examine it?

A. I went into the kitchen and examined the kettle, and on examination I found they had put in soda instead of salt. The cook made the mistake. She was a new cook—his nurse.

Q. That affected its color, did it not?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Did it change its smell?

A. No, sir.

Q. Nor taste?

A. Well, it did the taste. It was not corn meal mush or it would have turned color.

Q. You did not taste it?

A. I went into the kitchen and tasted it, but not when he had it by the side of the bed for me to taste.

Q. He asked you to taste it?

A. Yes, sir; I did, but I didn't there.

Q. You refused to do so?

A. Yes, sir.

Q. Then he accused you of attempting to poison it?

A. He said I must know something about it if I couldn't eat it myself. I said I didn't know anything about it; I wasn't in the kitchen when they cooked it.

A. Do you know whether he called the cook to make her taste it?

Q. I don't know whether he made her taste of it. He called both the nurse, the woman taking care of him, and the cook, both in, and called me in to see if I had lied about it.

Q. You do not know whether they tasted it or not?

A. I do not.

Q. In his presence; but you refused to?

A. I did.

Q. When was the last time he accused you of attempting to poison him?

A. I think it was in February, before he died.

Q. Early in February?

A. No, sir; the latter part of February.

Q. Did he ever accuse you of infidelity?

A. No, sir; not to me myself.

Q. Never to you?

A. No, sir.

Q. Do you recollect a conversation that took place at your house down at Redwood, between you and Mr. Bartlett, on the subject of Mr. Hawes being jealous of him?

A. Oh! I told him myself often that Mr. Hawes would laugh and say that Caddy looked like Mr. Washington Bartlett; that is as far as he would carry it with me.

Q. He often said that to you?

A. Yes, he said it several times.

Q. Do you know, Mrs. Hawes, what was the occasion, or what event was the cause of Mr. Hawes first charging you with infidelity?

A. I don't know.

Q. Did he ever complain to you or find fault with you about any of the visitors you received at your house?

A. Most every one that came.

Q. Did he make any particular complaint about any one which led you to suppose him jealous of that individual?

A. No, sir.

Q. Did you continue to receive visitors that he complained of after he had made these complaints to you?

A. Well, I don't know whether they came or didn't come.

Q. If they did come, did it make any difference with you?

A. Well, if I thought he was displeased at me, even at my own relations that were there, they could not come into the house when he was in those bad humors of his, because he didn't respect their feelings or mine, or anybody else's, when he took a notion to do those things.

Q. How was it about the casual callers? Did they continue to come after he had made these complaints, as before, whenever they saw fit, and he continue to treat them in the same way?

A. Casual callers?

Q. Yes, gentlemen who called on him, or on you.

A. They did not call on me often. I never made any objection, or he either, to parties coming to see him, unless he didn't happen to be in a good humor, and he would say he didn't want to see them.

Q. He did sometimes object to some visitors you received, did he not?

A. Not that I know of, particular persons.

Q. You do not recollect of any particular persons?

A. Except Mr. Bartlett. I think it was about four years ago, when he took a great dislike to Mr. Bartlett, because he did not indorse him when he was running for joint Senator, and he said he did not want him to come into his house never again, and wouldn't allow one of us to speak to him.

Q. Was it not when he was a candidate for Governor, or when he desired to be?

A. I don't know that he ever desired to be Governor.

Q. Didn't you ever hear of that?

A. No, sir. Mr. Bartlett was running for an office at the same time, and he could not indorse him, but that didn't make any difference to him.

Q. That made Mr. Hawes very angry at Mr. Bartlett?

A. Yes, sir.

Q. At that time? Mr. Bartlett had for a long series of years been on very intimate terms with Mr. Hawes, hadn't he?

A. I don't know how intimate he was.

Q. He was at the house frequently?

A. He was at the house occasionally, during the summer.

Q. He stayed there two or three days at a time, sometimes?

A. Sometimes he would stay, when he would come out in the country. Mr. Hawes invited him to do so.

Q. That had continued for some years, hadn't it?

A. Well, in 1862 I think it was the first time I ever saw Mr. Bartlett with Mr. Hawes.

Q. Were Mr. Bartlett and Mr. Hawes personal friends?

A. I considered them such.

Q. Mr. Hawes introduced Mr. Bartlett to you in the first instance as his particular friend, didn't he?

A. No, sir; he didn't say "particular friend." He brought him up to where we were boarding, on the corner of Stockton and Greenwich streets. We had rooms and board there, and he came up and brought him. It was on a Sabbath afternoon, if I am not mistaken, I don't know, and introduced him as Mr. Bartlett.

Q. Did you ever go to Mr. Bartlett's office?

A. Several times.

Q. About when was the first time?

A. I think it was after Mr. Hawes came back from Europe; in August, I think it was.

Q. About how many times did you go there?

A. Well, I don't know whether it was more than four times. Before Mr. Hawes' death?

Q. Yes.

A. I think probably it might have been four times. I am not sure whether it was that—or not many over that, if it was that.

Q. Did you ever go to his boarding-house to see him?

A. I did.

Q. How many times?

A. I think I went myself once and saw him.

Q. Did you ever make any engagement with Mr. Bartlett to meet you at any other place?

A. At the Lick House. I telegraphed to him to meet me there.

Q. Did he meet you there?

A. He did.

Q. Who came with you on that occasion?

A. My brother-in-law, Dr. Caldwell.

Q. What was the subject of the conversation at the Lick House?

Mr. BARNES—I object to that. I don't see the slightest materiality in it. I object to that as irrelevant and immaterial. Never mind; I withdraw the objection. Go on and state.

Mr. PRATT—What was the subject of the conversation?

A. Mr. Hawes.

Q. What was the conversation?

A. All the words that were said?

Q. The conversation as near as you can relate it.

A. Well; in the first place, the way I came to be there?

Q. Yes.

A. Mr. Bartlett had been acting as a friend, as I supposed, between Mr. Hawes and I, trying to see what he could do with Mr. Hawes to reconcile him on some matters; or, he was acting rather as a messenger; and he sent word to me that Mr. Hawes was in the city, and I was anxious to know what was going to become of me; and he

sent word by Mr. Munroe, the agent of the ranch, for me to come to the city here; that Mr. Hawes was going to leave, and that I wouldn't have an opportunity of speaking with him, or talking with him. I did not think any more about it, but I telegraphed to Mr. Bartlett that I would meet him at the Lick House—that I would meet him and would be at the Lick House that evening. I telegraphed at the same time to my brother-in-law to come and meet me on the three o'clock train; and, of course, I didn't know what was to be done, or what he wanted with me more. I arrived and had my dinner, and went to my rooms, and by and by Mr. Bartlett came, or, at least, his card came up, and he soon followed; and I wanted to know, in the first place, how Mr. Hawes was. He said he didn't see Mr. Hawes that evening, but we were speaking about him; and, in the first place, he told me that Mr. Hawes wouldn't have any communication with me, but I must get some responsible and respectable party, but not Parson Fitzgerald; he told me, though, after having come, that Mr. Hawes had concluded to go to Redwood the next morning, and was not going away. I told him I thought that was a nice piece of business, to have me come down and spend what little money I had at the hotel; that it was too late for me to see any respectable or responsible party that I might select. So I went back the next morning with Mr. Hawes on the train myself, and went to Redwood.

MR. BARNES—Did he speak to you on the way down?

A. No, sir; nor after I got there. He asked my little girl, who was with me, where she had been, and she told him she had been to the Lick House. Then he said, "Who did you see?" and he said, "Uncle Burns and Mr. Bartlett." Then said he, "What did they talk about?" Said she, "I don't know, papa."

MR. PRATT—Do you recollect whether the name of Mr. Stebbins was mentioned in that conversation?

A. I said I would see Dr. Stebbins and see if he could do anything for me.

Q. Did you say you would see him, or had seen him?

A. I said I would see him if I could. He was a friend of Mr. Hawes', and I never went to anybody but his friends.

Q. When did Mr. Hawes first accuse you—well, I will put it the other way first: Did Mr. Hawes ever accuse you of lying?

A. Oh, he said it often; whenever he would be talking to me, most.

Q. When was the first time?

A. I don't remember.

Q. About when, as near as you can approximate?

A. Well, I don't know. It has been so long, so many times, I don't remember the exact time—the date.

Q. Did he ever before he went to Europe?

A. Oh, yes, sir; a thousand times.

Q. Many times?

A. Yes, sir.

Q. Very often?

A. Very often.

Q. Can you state what occurrence or event led him to accuse you of lying on any of those occasions?

A. No; If I differed in opinion from him, that was sufficient cause for him to say a good many things very disagreeable.

Q. Whenever you got into controversy with him, he was as liable as any other way to accuse you of it?

Mr. BARNES—I object to that.

Mr. PRATT—I press that as immaterial. You do not recollect any occurrence at any time which gave rise to his accusing you of lying?

A. No, sir; not until he came back from Europe—any little thing that was said or done.

Q. Well, after he came back from Europe, do you recollect an occurrence which at any time led him to accuse you of lying?

A. Yes, sir.

Q. What was one of them?

A. He accused me of selling his wheat to a merchant in Redwood City, which I knew I had not done, and said when I denied it, that I lied.

Q. Did he accuse you of lying frequently after his return from Europe?

A. Yes, sir.

Q. About when was the last time?

A. I think it was about a day before he died.

Q. About a day before he died?

A. Yes, sir; I think it was.

Q. What occurrence or event produced that?

A. Something about his cooking. I said a thing was so, and he said I lied.

Mr. BARNES—I did not hear that.

A. I say I had told him that something was true about the cooking, and he said I lied.

Q. What was the thing?

A. I think it was some stew.

Q. I know there was a stew, but what was it about?

A. He accused me of putting some pepper, more pepper in it than ought to have been, and I said I had not done it, and he said I lied.

Mr. PRATT—Did that sort of thing occur very frequently after his return from Europe?

A. Yes, sir.

Q. Well, I will ask you generally, if the counsel don't object to it, was it his habit, whenever there was any controversy between you and him, about matters trifling or important, to talk to you in that way?

Mr. BARNES—I object to that. Let her go on and state to the Court, and the jury will say whether that was his habit from that state of facts.

Mr. PRATT—Then how many times did he do that after his return from Europe?

A. I tell you I don't know.

Mr. BATES—You have asked that question two or three times and got an answer. I object to it.

Mr. BARNES—Well, she has answered it and said she didn't know.

Mr. PRATT—Was it frequent?

A. Yes, sir.

Q. Almost daily?

A. Whenever I was where he was.

Q. Did he ever accuse you of stealing?

A. Why, he accused me of stealing his wheat.

Q. Was that the first time?

A. That was the first time I ever knew of his accusing me of stealing.

Q. Was that the last time?

A. I think it was.

MR. BARNES—You mean to you, personally?

A. To me, yes, sir; to me it was; that is what I said—that one time.

MR. PRATT—Q. Did he ever accuse you of teaching his children to lie?

A. Often.

Q. When did he first accuse you of teaching the children to lie?

A. When Horace was two or three years old.

Q. What was the occasion? What had occurred which led him to that accusation?

A. I do not remember what it was, sir. He said it so often without any cause, or any particular occurrence.

Q. Do you recollect what occurred on any other occasion, which led him to accuse you of learning the children to lie?

A. No, sir.

Q. When was the last time he accused you of that?

A. I do not remember.

Q. About when, as near as you can fix it?

A. Well, I think he mentioned it once or twice to Carrie, after he came back from Europe.

Q. Do you recollect what had occurred, or what was the occasion of this?

A. No, sir.

Q. Prior to his going to Europe, did he frequently accuse you of teaching the children to lie?

A. Yes, sir.

Q. You cannot recollect what was the occasion of it, in any instance?

A. No, sir.

Q. Had you ever told the children to deny anything to their father?

A. No, sir.

Q. And deny anything?

A. I told them on the contrary not to deny it, as he would think I told them to do it.

Q. Had you ever told them to conceal anything from him?

A. No, sir.

Q. When did you first consult a lawyer about Mr. Hawes' property or will?

A. I never did.

MR. BARNES—I object to that; I don't care whether she did or not. It is immaterial and irrelevant, and not testimony in rebuttal.

THE COURT—The question is already answered now. The witness says she never did. There is no use of arguing the objection now.

MR. PRATT—Did the witness answer that she never consulted a lawyer about the disposition of his property or will?

A. No, I never did.

Q. When did you first consult any person, other than a lawyer, upon the subject?

MR. BARNES—I object to that, as irrelevant and immaterial.

THE COURT—[After argument]. I will exclude the testimony, as immaterial. Note an exception.

MR. PRATT—Q. Did you ever see the will that is now in controversy?



A. I did.

Q. When?

A. On the 3d of March, and on the 4th of March.

Q. Did Mr. Hawes give it to you?

A. He did not.

Q. How did you get it?

A. I got it. It was in his coat pocket, hanging by the bedroom door. We had the hat-rack in the bedroom near his bed, which was near the door, as I went in. I saw this loose paper there, just as any other paper, and took it out and read it. I had heard about it the night before, when Mr. Putnam and Mr. Clark came over and signed it. It was like any other loose paper in his pocket, and I took it out, and sat on the side of the bed and read it, and put it back.

Q. What was Mr. Hawes' condition while you were reading it?

A. He was lying in bed asleep part of the time, and part of the time awake. He could see me. He could see everything that was going on in the room. There was a looking-glass right opposite his bed; a large looking-glass, and he could see every person that entered the room.

Q. In the looking-glass opposite his bed?

A. Yes, sir.

Q. How long did you keep the will?

A. Long enough to read it and put it back; and I read it the next day again.

Q. What time of the day was this?

A. In the morning.

Q. About what hour?

A. Between nine and ten o'clock.

Q. Did you tell Mr. Hawes that you had read the will?

A. I did not. He never asked me anything about it.

Q. Did you ever listen at the door, overhearing between Mr. Hawes and persons in his room?

MR. BARNES—I object to that. Suppose she did. I object to that as irrelevant and immaterial.

THE COURT—[After argument]—I overrule the objection.

A. I have heard it without particularly listening, because my bed was by the side of the door, and I could hear him often speaking to the parties, and some parties would speak louder than others who came there.

Q. Did you ever stand or sit and listen for that purpose?

A. At Redwood I did. I there heard him talking very loud, and listened to see what he was talking about, and I heard him abusing me, calling me all kinds of names to friends that were waiting on him at the time, and calling them names. There was no plaster on the walls; it was just cloth and paper, and there was a knot-hole in it, and I listened and heard what the conversation was until I could stand it no longer, and went in and told him that what he was saying was false, and it would be proved by Mr. Monroe, whom he was talking to, that it was false.

Q. You listened until you could stand it no longer?

A. I did. I got tired of standing, and went in; and I was, of course, very impatient about what he was saying. There was no foundation for it. He was trying to tell Mr. Monroe about it, to make an impression upon him; and I heard Mr. Monroe tell him he didn't wish to have anything to do with his domestic affairs, and he told him:

"Sir, you are in my employ; I pay you for your services of every description, and you have got to listen."

Q. You became very much enraged?

A. He did?

Q. You did?

A. No, sir; I didn't. I was not mad at all, because I felt that they were not true, and I went in, and of course Mr. Hawes was very much surprised when I came in, to know that I had heard these things.

Q. And you told him they were not true?

A. I did.

Q. That was one instance in which you accused him of lying?

A. I did; because it was positive.

Q. About how many times did you listen?

A. I think it must have been altogether about a dozen.

Q. That was at Redwood?

A. No, sir; it was not altogether at Redwood.

Q. Then you sometimes listened in the house on Folsom street?

A. I did.

Q. Did you on any of those occasions listen until you could endure it no longer, and then go in?

A. Never.

Q. Did you ever request any one to watch Mr. Hawes, and report what he was saying and doing?

A. No, I don't know that I ever asked any one to do that for me especially, for they were listening as well as I was—some of his nurses.

Q. Did they in fact report to you what transpired in his room, any of them?

A. No, sir; they did not, because he did not allow the nurses to stay in there.

Q. And you say they listened?

A. Yes; we sat in on the bed in an adjoining room.

Q. Were they in the habit of reporting to you what they heard?

A. No, sir; we generally heard about the same thing.

Q. And you never informed him that you had listened to any conversation in the house on Folsom street?

A. I don't know but I did. I would sometimes speak to him about things, and he wanted to know how I knew, and I told him it was very easy to hear when he was talking.

Q. Did you ever, when he asked you that, tell him that any of the servants, or the cook, or the nurse had told you?

A. No, for he never asked me.

Q. He would ask you how you knew such things happened—did you ever in answer to that say that any one had told you?

A. No.

Q. Did you know Ross Warren?

A. I did; he is dead.

Q. Was he ever in Mr. Hawes' employ?

A. Often.

Q. In what capacity?

A. Writing, copying, and as detective.

Q. And as a detective—what do you mean by that?

A. Trying to ferret out where I had sold the wheat, and to whom.

Q. Did Mr. Warren ever report to you what Mr. Hawes said, or what he was doing; or what he (Warren) was doing for Mr. Hawes?

A. No, for I knew.

Q. How did you know?

A. Because I was in the room very often when he was there writing, and others told me about his trying to find out about the wheat, from parties.

Q. Somebody about the house?

A. I think so. I don't know but what it might have been Mr. Monroe, I am not sure, because we talked about those things so much. He was one of the parties Mr. Hawes was abusing that night.

Q. Did you ever ask Mr. Warren to report to you what transpired in Mr. Hawes' room?

A. No, I did not.

Q. Were you residing or staying at Redwood during a part of the time that Mr. Warren was in Mr. Hawes' employ?

A. I was there all of the time.

Q. Did you receive any letters from Mr. Warren during that time?

A. Not that I know of, or remember.

Q. Are you certain whether you did or not?

A. No, sir; I am not certain; I don't remember whether I did or not.

Q. Do you recollect receiving any telegram from him?

A. No, I did not.

Q. Are you certain that you did not?

A. No, I think that I did not. I do not remember anything about a telegram.

Q. How did you learn that Mr. Hawes had executed that deed of foundation of the Mont Eagle University?

MR. BARNES—I object to that as irrelevant and immaterial.

THE COURT—I overrule the objection.

THE WITNESS—How did I first hear of it? I knew about it. Yes, sir; I could not tell you how I first learned it, but I overheard a good many conversations between him and a good many gentlemen who came to see him there.

Q. Where were you at the time this was executed?

A. I was in the bedroom adjoining Mr. Hawes' room, I think, I am not sure. Several times parties came there—whether it was—they came there to sign this deed—I think probably Mr. Hawes made me go down town for something, when several gentlemen came there, and I presume for that purpose.

Q. Perhaps there is a little confusion about it. That deed was executed, or one deed was executed and then destroyed, and then another deed was executed.

A. I don't know anything about a deed being destroyed, but I know there was one signed by a party of gentlemen.

Q. I refer now to the first one. Where were you when the first deed was executed?

A. I did not know that there had been but one.

Q. You did not know that there had been but one?

A. No, sir; I did not know it.

Q. When was that one executed?

A. I could not tell you whether it was the last of February sometime—the twenty-fourth of February—or the first of March. I think it was the twenty-fourth of February.

Q. You did not know anything about the former deed?

A. No, sir.

Q. Did you know on that day, when you came up and had that interview with Mr. Bartlett at the Lick House, that Mr. Hawes had that day, or the day before, signed some important papers?

A. I did not.

Q. On the 24th of February, when the present deed was executed, you were in the house on Folsom street?

A. I was there in the morning, and when they came in, I went down town, I think, on some errand.

Q. Now, let me ask you again, when or how did you ascertain that Mr. Hawes had signed that deed.

A. Why, I found it out that day.

Q. By whom?

A. I don't know; I could not tell you why or how.

Q. From somebody about the house?

A. No, sir; I think I found it myself; I think I asked Mr. Hawes; I think he told me himself.

Q. You think you asked Mr. Hawes?

A. Yes, sir.

Q. Where is Ross Warren?

A. He is dead.

Q. Did Mr. Hawes have a safe in his office on Folsom street?

A. A safe? Yes, sir.

Q. An iron safe?

A. I guess it is an iron safe; it is very strong.

Q. Where did Mr. Hawes keep his private papers and correspondence?

A. He kept some in the secretary, some in the safe, and some in the book-case over the safe.

Q. Did you remain in the house on Folsom street, after Mr. Hawes' death?

A. I think there was several days that I stayed in it, and went to the country, and came back, occasionally.

Q. Who first opened that safe, after Mr. Hawes' death?

A. I don't know. I think Mr. Hart is the first that I saw open that safe. He had some one to open it for him; I don't know who it was.

Q. Do you recollect seeing Mr. Bates there at that time?

A. Only with Mr. Hart, that I know of; because I did not know of any one else that could unlock it. I told him that Mr. Bates knew the combination. He had been in business for Mr. Hawes—that he would have to get him.

Q. Were you present when the safe was opened?

A. I was.

Q. Who else was present?

A. I don't know that any one was, except Mr. Hart and myself; unless it was a nurse or some lady that I left there to stay in the house.

Q. Then who opened the safe?

A. I don't know whether Mr. Bates or Mr. Hart, or whether Mr. Bates told Mr. Hart, or whether I did, or whether he did for us.

Q. Mr. Bates was there at the time?

A. Mr. Bates was there at the time, for we sent for him to be there and open the safe.

Q. You don't know which of them opened the safe?

A. I do not.

Q. Did either of them take anything out of the safe?

A. Mr. Hart did.

MR. BARNES—After Mr. Hawes' death?

A. Yes, sir.

MR. BARNES—Then I object to it as irrelevant and immaterial.

THE COURT—I don't see the relevancy of the testimony.

MR. PRATT—Did you take anything out of the safe?

MR. BARNES—I object.

THE COURT—I can't see that it has any relevancy.

MR. PRATT—Did you ever see a little journal or diary which Mr. Hawes kept before his death?

MR. BARNES—Yes, sir; we have got it, from the executor, and have got it now.

MR. PRATT—Did you ever see any letters from Professor Evans to Mr. Hawes?

A. Yes, sir.

Q. Where are those letters?

A. I have them in my possession on Folsom street.

Q. Will you be kind enough to produce them in Court?

A. If it is anything to benefit either side.

MR. BARNES—That is not the way to get them. If counsel wants anything in this case, there is a proper way to notify us.

MR. PRATT—As counsel are counsel for this witness, I suppose it will be sufficient to give them notice in open Court to produce those letters for our inspection.

THE COURT—You can give a notice, and I will decide upon the sufficiency of it. I am not prepared now. I think the Practice Act specifies how a notice should be given.

MR. PRATT—Very well, then; I will give them a formal notice.

Q. Did Mr. Hawes ever say anything to you about appointing Mr. Evans guardian of Horace?

A. Not until after I had seen the writing in his room; because he had appointed a guardian in Racine for him—a Mr. Ullman. He never gave any account why he did not continue that.

Q. Did you ever have any conversation on that subject with him afterwards?

A. Very often.

Q. What was that conversation?

A. What particular point do you want me to tell?

Q. With reference to the guardianship.

A. Why, I have always contended that he never should be; I thought Mr. Bartlett was to be the guardian when he accepted this trust fund—the money. I thought it included the whole thing.

Q. Had you a talk with Mr. Hawes then about the trusteeship of Mr. Bartlett?

A. We had before Mr. Bartlett accepted it.

Q. Did you know how the arrangement was to be before it was entered into?

A. No, sir.

Q. With Mr. Bartlett, I mean?

A. No, sir; the only thing is, I thought that he was to have the money to keep for Horace, for Horace's education, and to pay this man, and he was to act as guardian. I thought that was one and the same thing.

Q. At whose suggestion was Mr. Bartlett made trustee; yours or Mr. Hawes'.

A. Both. Well, he asked me to send after he came back home—he said he would like to put money into safe hands for Horace, so that no executors, or lawyers, or any other parties could get hold of it, and asked me if I knew of any body who I thought was trustworthy and faithful to put this money with. I named over Governor Haight; he objected to him, and I named over parties I had heard him speak highly of before he went to Europe, and R. B. Swain—I never knew the gentleman; but I mentioned those names, and I think Judge Hall; but he made objections—very serious objections to those; and then I said I don't know anybody but Washington Bartlett, who has neither wife nor family, nor anything but a dog to take care of, and I don't know but what he would do as well as anybody. He has known you and me for years, and he seems to think a great deal of us, and seems to be a friend of the family; and he did not know himself but what he would do just as well as anybody else, and I think the same day he telegraphed for Mr. Bartlett to come up.

Q. The appointment of Professor Evans you did not know anything about?

A. I did not know anything about that arrangement with him. That was made before he came home.

Q. Did you ever express your approbation of Mr. Evans' appointment?

Mr. BARNES—I object to that.

A. No, sir.

*Cross-Examination* by Mr. BARNES—Counsel asked you categorically, without asking for the reason, if you had ever been in Mr. Bartlett's office. You said you went there once or more—I forget how often—four times. What did you go there for?

A. I went to see Mr. Bartlett about Mr. Hawes.

Q. In what way?

A. About Mr. Hawes—to ask him about Mr. Hawes. How he was feeling—what was the matter with him. What was I to depend on; and for him to tell me all about him.

Q. At that time would Mr. Hawes permit you to come near him at all?

A. No, sir.

Q. Nor speak to you?

A. No, sir.

Q. Nor have any communication with you?

A. No, sir.

Q. Now, when you came up to the Lick House, at whose suggestion did you come to town?

A. Mr. Bartlett's.

Q. What for? Why was he wanting you up here?

A. It seems he had been talking to Mr. Hawes about those matters—about our affairs—I didn't know what capacity he was acting in—but that was the word he sent, that Mr. Hawes would not have any communication with me personally, but that I was to get some responsible, good, respectable party, but not Parson Fitzgerald; that he would talk with me, but that he would not communicate with me.

Q. But he would through that channel?

A. Yes, sir.



Q. And you came up from Redwood with your brother-in-law to the Lick House on that business?

A. I did; and on no other business.

Q. Did Mr. Hawes go back to Redwood the next morning?

A. He did.

Q. Did you not see him at all?

A. No, sir.

Q. Nor any responsible nor respectable party either?

A. No, sir; I had no time.

Q. Did you subsequently receive from Mr. Bartlett acting in that capacity, Mr. Hawes' ultimatum or document?

A. Afterwards I went down—after he came home that day he sent to Mrs. Thurber for her to come over; he wanted to talk with her, and to know what I went to the city for?

Q. He sent for Mrs. Thurber to come around there?

A. Yes, sir; to talk with him; and she told him that Mr. Bartlett had sent for me. Afterwards, I wanted to know what he sent for her for, and she told me what. I had told her what I was going to the city for. I think he then telegraphed to Mr. Bartlett, and they had a conversation together. I don't know what he told Mr. Bartlett, or what Mr. Bartlett told him.

Q. Did you get a document, following that?

A. Yes, sir; in the first place, before the document came, Mr. Bartlett came in to me, to know what I would take to go away from home; what I thought a sufficient sum would pay; and I told him I thought, as Mr. Hawes' wife, and considering his means and all, that \$200 would not be too much for myself and girl.

Q. A month?

A. Yes, sir; to go off and board simply in a respectable place. He says, "Can't you live on less than that? Can't you live on \$150?" and I said, yes. I told him I thought I could live on \$50, if I would go to a certain hotel in Redwood City, where I could get board for \$25 or \$30 per month; but I did not think, as Mr. Hawes' wife, I was required to do so; and he sent back and told Mr. Hawes what I said about the \$150, and then he brought me a paper.

Q. I ask you if that is the document that Mr. Bartlett brought you? [Showing witness a paper.]

A. Yes, sir.

MR. BARNES—I would like to offer that in evidence, to show the relations between Mr. Barnes and this lady, which gave her husband such cause of suspicion, and what ground he had for denouncing her as he did. There is no dispute about the signature. The signature of this instrument is admitted. It is dated 21st August, 1870. [Reads.] "I will make no bargain or arrangement with the woman who sustains to me the relation of a wife, however unworthily; she will be required to live where, and in such style, as I, in my judgment, may deem suitable and proper; although if her conduct had not been so very exceptionable as it has, even beyond, I would have consulted her wishes; yet I should still have expected, as I shall now enforce, on her part, implicit obedience in all things. The prerogative of a husband will be firmly maintained by me to the end of my life. Redwood Farm, August 20th, 1870. Horace Hawes." [The paper just read marked "Exhibit No. 8."] That was the message from your husband, that Mr. Bartlett brought back?

A. Yes, sir.

Q. That then was the business upon which you and Mr. Bartlett were negotiating?

A. Yes, sir.

Q. Mr. Hawes knew all about it?

A. Yes, sir.

Q. Was that the whole story of your relation with Mr. Bartlett?

A. No; he sat down and talked awhile about me; he didn't think that I would have any interest in Mr. Hawes' estate. I told him I had nothing to do with that affair now.

Q. I mean, your conversation with Mr. Bartlett, and your interviews with him at his office, and at the Lick House, were on the subject of Mr. Hawes?

A. Yes, sir.

Q. And in relation to the matter spoken of in this thing?

A. Yes, sir.

Q. Counsel asked you whether you did not once go to Mr. Bartlett's boarding-house—where was that boarding-house?

A. That was at Mrs. Mann's, on the corner of Stockton and Market, and Fourth, I think, comes in there.

Q. A respectable house?

A. I suppose so. I know nothing about it. I knew that he boarded there.

Q. Did you see him?

A. I did.

Q. Where?

A. In the parlor.

Q. What is it—a large boarding-house and hotel?

A. A boarding-house, I think.

Q. What was your interview there with him about?

A. About Mr. Hawes.

Q. On this same business?

A. Yes, sir.

Q. Why did you go to Mrs. Mann's?

A. Because I knew he would be there in the morning, and I wanted to see him in the morning. I think it was eight or nine o'clock—probably eight or nine—I don't know which it was. He had been to his breakfast.

Q. And that was the business, and that was why you went there?

A. That was why.

Q. Now, at this time when you went there to the boarding-house for Mr. Bartlett, was he engaged in endeavoring to arrange matters between yourself and Mr. Hawes?

A. I thought so; but he said to me he did not want me to talk to him any more about those things.

Q. That he could not help it—could not help this. Was that it?

A. Of course; he was tired of it, any way.

Q. You state that when Mr. Hawes went away he left his brother, or cousin, in possession of the house on Folsom street, and he stayed there a week. Who had the keys of the place while he was there?

A. He had one night-key and I had the other.

Q. When he went away what did he do with the key?

A. I am not sure whether he gave it to me or left it with Mr. Bates.

Q. When there?

A. Yes, sir.

Q. Do you remember whether he gave it to you or to Mr. Bates?

A. We have two keys; and I think I kept one, and he gave Mr. Bates the other?

Q. Whereabouts was this furniture you say that has been spoken of? Was it in the house?

A. No, sir; it was stored away up in the loft.

Q. You took it and sold it?

A. I did.

Q. Who to?

A. I sold a part of it to a woman that was living in one of Mr. Hawes' houses in Block 44—Mrs. Douglass.

Q. And the balance?

A. To a lady by the name of McFarland.

Q. What did you get for that truck?

A. I think it was about one hundred dollars.

Q. What sort of condition was the furniture in when you sold it?

A. It was in a very bad condition.

Q. What did you do with the money?

A. I paid a bill at the Nucleus grocery, and a butcher bill on Folsom street, between Seventh and Eighth. I don't know what his name is: Strobel I think it was; it is a German name. And out of that money and some more—I think I took a part of it to go to San Clara—three or four dollars.

Q. What was this bill for groceries at the Nucleus grocery?

A. It was for groceries that we had bought some time before Mr. Hawes went away.

Q. To what condition of annoyance were you reduced by reason of that bill?

A. Well, it was in the hands of a collector, that and another bill was; and they sent me word that they should like to have the money. Mr. Hawes had told Mr. Bates that he should not pay any bills. He had left word with Mr. Bates to pay no bills.

Q. Mr. Hawes had told Mr. Bates not to pay any bills?

A. Yes, sir.

Q. Were these bills justly due for articles furnished Mr. Hawes' family before he went away?

A. Yes, sir.

Q. Do you remember the amount of the grocery bill?

A. No; I think it was about seventy dollars. I am not sure.

Q. Do you remember when was the meat furnished by Strobel?

A. I think it was partly in May and June.

Q. May?

A. And June. May, for some at Redwood, while his relations were stopping there.

Q. What relations of his were visiting you?

A. His sister, his cousin, and his cousin's wife, who died at our house.

Q. Three of them?

A. Besides several others of the family.

Q. And this was the bill that you got at the butcher's to keep them alive?

A. Well, to furnish them something to eat.

Q. How long a time was that butcher bill running?

A. I don't know whether it was two or three months. Two or three months, I think.

Q. What was the amount of it?

A. Twenty-five dollars. You must understand it was not all the meat we had; we had a butcher at Redwood that I had to pay.

Q. Now, when Mr. Hawes went away, what provision did he make if any, for your support? Board, clothing, washing, etc., and the little girls?

A. He made none with me. He gave me twenty dollars when he started on the wharf. He said that was most all he had; that probably by and by I could have more. Afterwards I learned that Mr. Bates had written instructions what to give me, but I never saw those instructions. I took whatever they gave me.

Q. You stated that all the indebtedness you incurred during his absence was not over fifteen hundred dollars. Do you mean that that was all the money you spent while he was gone?

A. I think it was probably a little more than I spent.

Q. What was that indebtedness for?

A. Clothing, living, traveling back and forth as he said I should do, from Redwood to Santa Clara and back again.

Q. How much of that indebtedness have you paid yourself—did you pay yourself; and how much remains unpaid, and was unpaid at the time of his return from Europe?

A. I don't know. It was the only bill that I know of that I had.

Q. What bill was that?

A. A little bill with Taaffe & Co.

Q. How large was that?

A. I think it is one hundred and fifty dollars.

Q. What was that for?

A. Dry goods.

Q. Who for?

A. For myself and his sister, and some presents for his sister, and his children when she was going East, and for myself, my children, and a few things I made a present to my sister's family.

Q. Well, how much indebted were you, taking everything into account? How much were you indebted when Mr. Hawes got home from Europe, after leaving you twenty dollars on the dock?

A. I don't know that I was very much indebted; I don't know. I know that there was a butcher bill at Redwood City of forty or forty-eight dollars.

Q. A butcher bill?

A. Yes, sir; and a grocery bill.

Q. And this bill at Taaffe's. Were they all?

A. I think that was all I had.

Q. Did Mr. Hawes have to pay any of them after he got home?

A. No, sir.

Q. He stood a suit on the grocery bill, at Redwood City?

A. I think so.

Q. Mr. Pratt has asked you, with reference to your hearing from one room, what went on in another. Now, I ask if that place where you live when Mr. Hawes sent you out of his room, or would not allow you to come in it, what place you would have had to go to, unless you went out doors, and stayed there?

A. I could not have any, except to go into the bath-room, or the little bedroom.

Q. And then, when you retired from the presence, you were compelled, as a matter of course, to go into the bedroom?

A. Yes, sir, unless I went out of doors.

Q. What accommodations were there for you to sit on?

A. I think we had one chair; no, we did not, for we had both chairs in the house, in his own room.

Q. So that, when he ordered you out of the room, you had to go into the bedroom, and if you sat down, you sat down on the bed?

A. Yes, sir; or on the side of the bath tub.

Q. And that was the place where counsel asked you when he listened to what was going on, when you was in Mr. Hawes' room?

A. Yes, sir.

Q. So far as you know, Mrs. Hawes, after Mr. Hawes returned from Europe, during the months of July, August, September, October, November and December, what were Mr. Hawes' relations with Washington Bartlett?

A. I don't know; Mr. Bartlett was around him and near him most of the time.

Q. That is what I mean. They were constantly in intercourse?

A. Yes, sir.

Q. Mr. Pratt called your attention two or three times, to casual visitors. Now, had you any visitors at Redwood Farm, casual otherwise, except such as were mutual acquaintances of Mr. Hawes and yourself?

A. No, sir, I had none other.

Q. Had you any visitors, male or female, except such as he knew?

A. No, sir.

Q. He asked you whether Mr. Hawes had not objected to you having company. You said he did. Whom did he object to? What was the reason of his objection?

A. He objected to my niece being there, or nieces, or Dr. Caldwell's children, and he did not want them around.

Q. Had you any gentlemen visitors, or visitors of any kind or condition at Redwood farm to whom Mr. Hawes ever objected?

A. Not that I know of.

Q. Then the visitors, or casual visitors that counsel alluded to in his question, were visitors that simply came there—your relations and your acquaintances and others who came to make calls?

A. Yes, sir.

Q. You mentioned an instance in which you said he objected and did not want anything more to do with Washington Bartlett, because Mr. Bartlett would not endorse him for Joint Senator, or Governor, or something or other. Was he the only man that he ever said he did not want to go into his house, and was that the only reason he ever signed against Mr. Bartlett?

A. That was the only reason he ever gave me.

Q. At this time in August and September, when you were trying to reach Mr. Hawes, or he you through the medium of Washington Bartlett, do you know, except what Mr. Bartlett told you and the document that has been introduced in evidence that Mr. Bartlett was at that time negotiating between you, and that Mr. Hawes knew it and that was the reason why you came to go there?

A. That was the reason why I came.

Q. Do you know whether Mr. Hawes knew that fact? In other words, do you know whether or not Mr. Hawes was aware that you

were meeting Mr. Bartlett on this business, other than what Mr. Bartlett told you and the fact of this document?

A. No, sir; I don't know of it.

Q. You had no intercourse, then, or conversation with Mr. Hawes on that subject?

A. No, sir.

Q. What was the reason at this particular crisis for Mr. Hawes refusing to speak to you, even when you were on the same train of cars with him, and going to your own home?

A. I don't know. It was the same that caused him to leave me. He left me mad a few days before that.

Q. What was he mad at?

A. He was mad about his food, and about the nurses, and about my taking the wheat.

Q. Oh! I didn't ask you what you sold that wheat for. How much wheat was there in that place when you sold it?

A. I don't know; a great many sacks.

Q. A barn full?

A. We have it in large bins, half as large as this room, divided off, and filled and fastened up.

Q. A large quantity?

A. Yes, sir.

Q. The product of the place for that year?

A. A part of it.

Q. A part of the year before?

A. No, sir; a part was in the bin.

Q. Now were you living on Redwood farm at that time?

A. I had been since February. I left the city after living in the Folsom street house three months, and there was nobody to take care of the place, and I was sent word to that I had better come up and look after it, and I did, and I wrote to Mr. Hawes in Cannes about it.

Q. How much did you get for those hundred sacks of wheat?

A. I don't know, it was nearly two hundred dollars.

Q. What did you do with the money?

A. I paid these bills with a part of it—some bills I had—and some I kept.

Q. How much of it did you use for bills, and for what sort of bills?

A. Well, I used some of it to pay this bill of Taaffe's that I spoke of, or a part of it, and a part of it I owed Tucker for some spoons and forks that I bought, that we might have something respectable when his relatives came.

Q. To what extent did you indulge at Tucker's in the extravagance of forks and spoons?

A. Fifty dollars.

Q. Were those spoons and that fork purchased before he went away, or after?

A. Before he went to Europe. Just about the time his relations were coming out.

Q. Did he know that you bought them?

A. He did, before he went to Europe.

Q. How long before he went to Europe had you got them?

A. He started in September; I got them, I think, in April or May.

Q. Had got them opened out in the house in the mean time?



A. Yes, I was using them all the time his relations were there.

Q. And that was to pay Tucker's bill that this wheat went?

A. A part of it.

Q. Did those spoons and forks continue the estate and property of Mr. Hawes?

A. They did.

Q. What has become of them?

A. I have them at the ranch.

Q. They have been in use in his family from that time up to the time he departed this life?

A. All the time.

Q. Now, what other bill did you pay with the proceeds of the wheat—Taaffe & Co.?

A. Yes, sir; and some little bills, I don't remember what; if I had my diary here I could tell you.

Q. Then, so far as you know, none of the proceeds of that furniture or wheat, was spent in riotous living?

A. Well, no.

Q. But for the support and maintenance of Mr. Hawes' house and dignity?

A. Yes, sir.

Q. The counsel on the other side, ask you whether, when Mr. Hawes came home, you did not deny to him that you had sold the wheat and furniture?

A. No, sir, I did not deny it.

Q. How did you come to tell him about it?

A. Well, I found out from Mr. Monroe and Mr. Warren, and somebody else—Mr. Monroe was our new agent, just coming in, and they were trying to get innocent parties into trouble. I overheard this, and knew about it in fact, and I went in and I said to Mr. Monroe, "You are a new agent, just come in here. I would like to have you come in clean and fair, and I want you and Mr. Warren to go into Mr. Hawes' room, and be there when I bring the breakfast," for I was doing the cooking for all of them at that time; so they went in, and said I wanted to make a clean breast of that wheat business, and went on and told Mr. Hawes; I had told them before. I knew he would get in a great rage, which he did, and he told me to clear out of the house. I told him I had taken the wheat, and for what purpose I had taken it.

Q. And for what purpose you had applied the money?

A. Yes, sir.

Q. Paying these bills you have named?

A. Yes, sir, paying bills, I said.

Q. Do you know anything about Mr. Hawes having tried to get a warrant to have you arrested for larceny for taking this wheat?

A. Yes, sir.

Q. Did he?

A. No, sir. He did not get the warrant that I know of.

Q. Do you know whether he did try to get a warrant, to have you arrested?

A. I know that he said he did.

Q. Who did he tell that to?

A. To me.

Q. What did he tell you about it?

A. Well, he said it was very well that I came in and told them; that he would have had the whole party arrested in less than an hour.

Q. As a matter of fact, do you know whether or not, he did try to get a warrant to have you arrested for larceny, for stealing this truck to pay bills?

A. No, sir; I don't know whether he did or not, only what he said himself.

Q. You never heard about it from other sources?

A. No, I think not.

Q. Did Mr. Bates ever tell you about it?

MR. PRATT—I object to that.

A. Oh! about the goods in town. That was not about the wheat.

MR. BARNES—About the goods in town here, do you know anything about them?

A. I understood from Mr. Bates that he—

THE COURT—[Interrupting]—The question is objected to.

MR. PRATT—I object to what Mr. Bates told her.

MR. BARNES—That is all I want to know, whether she ever learned the fact that he did do it from any source. I want to show that he did. It is not proper that I should. I will prove it by Mr. Bates.

*Re-direct-Examination* by Mr. PRATT—Q. Were all these interviews with Mr. Bartlett on the same subject; about the same thing?

A. Before Mr. Hawes' death?

Q. Yes.

A. I think so. I do not know of any other. Perhaps Mr. Bartlett could mention something to refresh my memory about it.

Q. They all referred to the matter of bringing about some amicable arrangement between yourself and Mr. Hawes?

A. I do not know of anything else, unless we were talking about Mr. Hawes.

Q. Did not some of them take place before the difficulty occurred?

A. I do not know that they did. I am not sure. They might have done so, but I don't remembr if they did.

Q. You think all those visits to him were after he returned from Europe, and you had had this trouble about the wheat?

A. Trouble about what?

Q. About the wheat—selling the grain?

A. I do not remember of having gone to Mr. Bartlett's office before that. I do not know.

Q. You are not certain?

A. No, sir, I am not.

MR. BARNES—I forgot to ask her one question, if you will permit me to ask her: Q. I gather from the case that Mr. Hawes was not altogether liberal with you in the matter of money; but I want to ask you whether you remember an occasion in his room of which one of those nurses spoke here, when you were going down to Redwood City and told him you wanted some money to use down there to live on. Do you remember that occasion?

A. I do.

Q. Won't you state what your pecuniary condition was at that time?

A. At the time I said that?

MR. PRATT—I object to that as not being re-cross-examination.

THE COURT—[After argument]—You will have to make her your own witness to prove that fact.

MR. PRATT—[To witness.] Let me ask you the name of the cook on the occasion of this peculiar mush being made?

A. I do not know; there was two. He had a nurse by the name of Frances Hurd, and a woman, Lizzie Smith. Mr. Bartlett might remember the name; he was there at the time.

Q. Frances Hurd was the name?

A. I think it was the name.

Q. Do you know where she is?

A. I do not.

MR. BARNES—Q. Had you anything to do in any way with the manufacture or the cooking of that mush?

A. No, sir; I was not by when it was cooked, but I was called in to testify something about it.

MR. PRATT—Q. Were there no rooms in the house on Folsom street except the bedroom and Mr. Hawes' office?

A. None but the bath room.

Q. There were only three rooms in the house?

A. That we occupied. Captain Bluxome has the other part of the house rented. We only occupy the ell. That was three rooms.

Q. Where was the dining room?

A. Anywhere we could get it.

Q. Where was the kitchen?

A. In the bath room.

Q. Those were the only rooms you were at liberty to occupy?

A. Yes, sir.

Q. The bedroom, Mr. Hawes' office; and the bath room and the bedroom were the same thing?

A. No, there was a door between.

THE COURT—The bath room and the kitchen were the same thing she said.

A. The kitchen and the bath room were the same.

MR. PRATT—Was the bedroom or the bath room next to Mr. Hawes' room?

A. The bedroom.

Q. How much did Mr. Bates pay you? Mr. Barnes asked you what provision was made for you.

A. Mr. Bates paid me one hundred dollars a month.

Q. How long did Mr. Hawes' relatives remain with you after he went away?

A. A part of them—one died in July; the sister went home August, and the cousin, I think, went home in October.

Q. Mr. Hawes went away in September, did he?

A. Yes, sir.

Q. And one of them died in—?

A. In July.

Q. Following?

A. No, sir; before he went away—while he was absent. He went East before he went to Europe.

Q. Whom did he leave with you when he went to Europe?

A. His cousin, Wm. B. Hawes, and his wife, and Mrs. Martin, his sister.

Q. How long did those three remain with you?

A. One stayed longer than the other. They came there—

Q. How long after Mr. Hawes went to Europe did they remain?

A. A week afterward, Mr. Hawes did.

Q. You had to provide for them then, about one week after Mr. Hawes went to Europe?

A. No, I did not, because he was not at the ranch.

Q. They were not on the ranch?

A. No, sir. They were in the city, at the office rooms.

Q. What other sums of money than those you have mentioned, did you receive during Mr. Hawes' absence?

MR. BARNES—I object to that. That is not in rebuttal.

MR. PRATT—I withdraw the question, then; not because the objection is good, but because I choose to.

Q. When did Mr. Hawes first ask about the wheat, after his return? Was it on the morning after his return? Was it on the morning Mr. Monroe was at breakfast?

MR. BARNES—I object to that, on the same ground.

MR. PRATT—I will take the ruling of the Court upon it.

THE COURT—I think you have had about enough on that point. I overrule it.

MR. PRATT—Q. How old were you when you married Mr. Hawes?

A. I was not thirty.

Q. Do you recollect what year it was?

MR. BARNES—I object. It is utterly immaterial.

THE COURT—I do not see it is material.

MR. BARNES—Unless the counsel has designs upon her himself.

A. He need not have.

THE COURT—I do not see the materiality of the question. I will rule that out.

MR. PRATT—Where were you educated, Mrs. Hawes?

MR. BARNES—I object to that.

THE COURT—I sustain the objection.

A JUROR—Q. How long did Mr. Hawes remain in Europe? How long was he gone from here?

A. He was away from the 25th of September until the 18th of July following.

[Here the Court adjourned until Monday next, at two o'clock, P. M.]

## TWELFTH DAY.

MONDAY, NOVEMBER 27th, 1871.

Geo. H. HOWARD, called for the Executors. Sworn.

*Examined by MR. PRATT.*—Q. How long have you resided in California?

A. Since 1849, sir.

Q. Where do you now reside?

A. In San Mateo County.

Q. Where is your principal business conducted?

A. In San Francisco.

Q. What is that business?

A. Real estate.

Q. Did you know the late Horace Hawes in his lifetime?

A. I did, sir.

Q. How long did you know him?

A. Eighteen years or more.

Q. When did you first become well, or intimately acquainted with Mr. Hawes?

A. I don't know that I can say. I was very intimately acquainted with Mr. Hawes—well acquainted. I have known him during all that time, from some eighteen years ago up to the day of his death.

Q. You met him frequently during that time?

A. Not frequently, sir; I met him from day to day.

Q. How often did you see him, during the last four or five months of his life?

A. I suppose I saw him, perhaps, ten or a dozen times; I don't know the exact number.

Q. Where did you meet him during that time?

A. At his own house, on Folsom street.

Q. What was the occasion of your going over to his house?

A. He sent for me to come and see him.

Q. Did you converse with him freely, on the occasion of those visits?

A. Yes, sir.

Q. What was the usual subject of conversation?

A. This deed; this Mont Eagle University deed.

Q. Did you also talk with him at any of those visits, on other subjects?

A. Yes, sir.

Q. General subjects?

A. General subjects.

Q. When did he first speak to you, Mr. Howard, on the subject of founding some public institution?

A. I have an indistinct recollection of his speaking to me seven or eight years ago, on that subject—more particularly in '66, at the time we were in the Legislature together.

Q. Can you state what the conversation was in 1866, that you refer to?

MR. BARNES—I object. He does not state whether he can or not.

MR. PRATT—Well, answer the question simply. Can you state the conversation which took place in 1860?

A. I could not state precisely the conversation.

Q. Substantially ?

A. Yes, sir, its general purport.

Q. What was that conversation ?

MR. BARNES—I object.

THE COURT—What is the objection ?

MR. BARNES—It is irrelevant, immaterial, and not a part of the issue of this case. The issue submitted to this jury is, whether at the time of making this instrument, Mr. Hawes was of sound and disposing mind. It is very probable he may have had a conversation with the witness. No doubt he did in '66, on the subject of founding a university, but its irrelevance and immateriality should be the rule in trying that question, and I don't understand that it is at all.

THE COURT—The objection is overruled.

MR. BARNES—Note an exception.

MR. PRATT—State the conversation, Mr. Howard.

A. Well, sir, my recollection is not very definite. He stated to me that he intended to found a university of learning. He went into no particulars about the matter, referring, however, to his farm at Redwood City as the seat of the institution.

Q. About how many times, Mr. Howard, did he talk to you on that same subject ?

A. At that time ?

Q. Since that time—from that time on.

A. He probably spoke to me about three times during the time I was in the Legislature, and the next time was in France—Paris, at the time he was on his way out to this country.

Q. What was the conversation in France ?

A. In France—

MR. BARNES—I object, on the ground that it is irrelevant, immaterial and also not evidence in rebuttal.

THE COURT—The same ruling.

THE WITNESS—He then gave me a deed to read, one that he said he had been many years at work upon, and asked me to read it carefully and tell him what I thought of it. He was, however, quite ill next morning—this was in the evening—the next morning he sent to me saying that he felt so ill that he thought he would better return home, and asked me to come and see him. I also advised him to go. He was in a weak state; and I went with him, took his ticket, and saw him off. So that we had really very little conversation about the deed. He remained in Paris I think nearly one year.

Q. Did he express the same intention, the same general intention that he had previously ?

MR. BARNES—I object to the form of that question. Ask him to state what he said.

MR. PRATT—I will put the question in that form, then. What view did he express to you then in regard to founding any public institution ?

MR. BARNES—I object to that. That assumes a fact not proven. The witness has not stated that he had any conversation with him on that subject.

MR. BALDWIN—It is very late to object to a form of this class. They have been admitted in every form up to the present time.

MR. PRATT—I will take the ruling of the Court.

THE COURT—What is the question ?

MR. PRATT—What intention did he express, if any ?



THE COURT—You can put it in that shape.

THE WITNESS—That that was his intention, to have an institution of learning.

Q. Did you see him again before he returned to California?

A. No, sir.

Q. After he returned to California, how many times did he probably speak to you on that same subject before his death? After his return to California did he probably speak to you on that same subject?

A. I should think perhaps a dozen times.

Q. When did he last speak to you on that subject, as near as you can fix the date? How long, prior to his death?

A. On the very day of his death.

Q. On the third day prior to his death?

A. On the day of his death.

Q. Now state whether or not he generally expressed the same intention upon that subject in all of these conversations?

A. He spoke very confidently of it, and very confidently that it would succeed. When he was spoken to regarding the provisions of the deed, he said the more it was studied, the more we could be convinced that it could be carried out.

Q. What was his usual manner of discussing on this matter with you?

A. Do you mean that—

Q. [Interrupting.] Was he calm, tranquil and cool?

A. Quite so, and very earnest always when speaking of that.

Q. Did he ever in this conversation in connection with this subject speak of the wife or the family?

A. The first time that he sent for me to visit him in regard to this matter, I asked him if he had made provision for his family, and he said yes, he had made ample provision.

MR. BARNES—I move to strike that out. The instrument is here before the jury, and speaks for itself.

THE COURT—The motion is denied. It is something the jury may have the right to consider, whether that is a provision or not.

MR. PRATT—When the matter of his family was brought into the discussion, did that change the manner of discussing the subject to any extent?

A. No, sir; he never spoke to me of his family.

Q. Did he ever express to you his general views as to leaving much property to his children? What were those views?

MR. BARNES—I object to that.

THE COURT—It is overruled.

THE WITNESS—He said at one time that he thought the best inheritance he could leave to his children would be a foundation such as he had made. He wished his children to be thoroughly and well educated, and further than that he did not approve of leaving to them a large amount of money.

Q. How long ago was that, Mr. Howard?

A. Well, sir, that must have been within a fortnight of his death, I think.

Q. Was that the first conversation you recollect of having had with him on that subject, speaking of leaving property to his children?

A. I don't think I ever had any other with him.

Q. Did he ever converse with you on the subject of his own future fame, posthumous fame?

A. No, sir.

Q. Did he ever speak to you of his domestic troubles—troubles of his family?

A. Never—never.

Q. How did he seem to regard his children—that is, with affection, tenderness, or otherwise?

MR. BARNES—I object. You may state what was done and what was said, but not put general questions of that kind. The jury are the ones to judge of how he seemed to feel, and what he did.

MR. PRATT—How did he speak of his children?

A. Always with the greatest affection, of both of his children. I remember he had frequently spoken to me about a year ago. The little girl at the time he was so ill was with him a great deal, and he said—in speaking of her, his features always lighted up, and seemed different from what I had ever seen them before. He spoke to her and of her with the greatest affection.

Q. Did Mrs. Hawes ever talk to you upon the subject of her troubles with Mr. Hawes?

A. I think not. No, sir; she did not. In fact, until within a short time of his death, I did not know that there had been any trouble. I had been out of the country a long time—until I read these notices in the paper.

Q. Did you frequently see Mrs. Hawes in his own presence during these visits to his house?

A. Yes, sir.

Q. How did he treat her on those occasions?

A. Well, sir, he treated her with no great affection, but never rudely.

Q. Was there anything in the general character, life, habits, notions and views of Mr. Hawes that distinguished him from the general class, the general standard of men?

A. Yes, sir; he was always considered a very penurious man, and a man very hard—

MR. BARNES—[Interrupting.] Is the witness now testifying to the general reputation of the man, or what he knows himself?

MR. PRATT—State what these peculiarities were.

MR. BARNES—That you know of. Not general reputation, but what you know of.

MR. PRATT—Yes, sir.

A. I cannot very well, from my personal knowledge about Mr. Hawes, in that respect.

Q. What was his intellectual standing, high or low?

MR. BARNES—I object to that. Let the witness state what he knows about his standing, individually. If he has any facts to lay before this Court and jury, let us have them. I submit there is no propriety in asking the question, what was his intellectual standing.

MR. PRATT—I will take the ruling of the Court.

THE COURT—I overrule the objection. Answer the question.

THE WITNESS—I had always thought him to be a very shrewd lawyer.

Q. What was his general capacity and ability?

A. It is a very difficult question to be fixed. I don't know how to answer it.

Q. Good, bad, or fair?

A. He was thought to be a very able man.

Q. Was he an educated or uneducated man?

A. Apart from public matters, I know very little of his education. His conversation with me, was always upon some matters in which we might be mutually interested.

Q. What was his temper and disposition, that is, was it mild and gentle, or the reverse?

A. Quite the reverse, sir. Very disagreeable man to have any business with.

Q. What were his views of his own abilities, capacities and judgment?

A. He considered his judgment better than that of any one else?

Q. What was his general treatment or conduct toward those whom he regarded as his inferiors, particularly when he was opposed in his wishes?

MR. BARNES—I object, as he has been answering a series of questions, saying himself he knows very little about it, and yet undertaking to testify to Mr. Hawes' general reputation. On this point I submit it is improper.

THE COURT—Confine it to his personal observation and knowledge.

Q. From your personal observation and knowledge of the man, Mr. Howard, what was his conduct and treatment of those he regarded as his inferiors, particularly whenever opposed in his peculiar notions or judgment?

A. I don't know that I have had any opportunity of judging.

Q. You have transacted some business with Mr. Hawes, have you not?

A. Yes, sir.

Q. State what his business habits were?

A. As to his eccentricities?

Q. Yes.

A. He was very—

MR. BARNES—[Interrupting]—I object to the witness characterizing him at all. Let him state what he did, if he can, without characterizing him at all, and the jury will form the conclusion about the man. The witness is put upon the stand not as an expert to give his impression of the man looking outside of facts, or to form conclusions himself; but what he saw with respect to facts; the facts that he wants to state, let him give.

THE COURT—I don't think the witness' attention can be directed so as to bring out the facts by examination without asking these questions—by asking him to state everything that took place between him and Mr. Hawes would be something I would not care to hear of.

MR. BARNES.—He asked him if he had business transactions with him. The witness says yes. Now he asks what was his general conduct. I object to his stating his general conduct. Let him state the facts simply.

THE COURT—It might involve a great many things in Paris and somewhere else. I don't think it is too latitudinous the way it is put.

MR. PRATT—From your own observation and knowledge of Mr. Hawes, what were his habits?—that is to say, I merely direct your attention to the point on which I wish you to fix; but not indicating the facts I wish you to give. Was he careless or precise, exacting and particular?

A. He was very precise; very exacting.

Q. Did that habit continue—How long did that habit continue with him?

A. I think up to the time he breathed his last breath. I was with him within, I think, about three hours before his death.

Q. Did he transact any business at that time?

A. He did, sir.

Q. What was Mr. Hawes' estimate and appreciation of the value and uses of money?

MR. BARNES—I object to that question.

THE COURT—It is overruled.

MR. BARNES—Note an exception, Mr. Reporter.

A. He wished to have the full value of every cent he spent.

Q. What were his habits, in regard to his personal and family expenses?

A. It is hard to judge of that, sir. I could only judge of that from hearsay.

Q. Was he naturally suspicious and cautious, or trusting and confiding?

A. Naturally very suspicious, and very cautious.

Q. What was his temperament; nervous and irritable, or the reverse?

A. Nervous and irritable.

Q. To what extent?

A. I think he was the most nervous and irritable man I ever have seen.

Q. From all your knowledge and observation of Mr. Hawes, have you settled in an opinion as to his sanity or insanity?

A. I have a settled opinion as to his sanity. I think he was so.

MR. BARNES—Don't answer the question. You have a decided opinion; that is all right.

MR. PRATT—What is the opinion?

MR. BARNES—Now, I object, on the ground, that if the counsel had desired to prove, by this witness or any other, the issues in the case, that he is bound to prove in the affirmative proposition. He should have done so at the outset. We proceeded so far in the discussion of this proposal the other day, as to bring from the other side a concession of the general proposition; that the burden of proof in this case, is with the parties defending the will, or those in favor of it. That while the law does not presume sanity or insanity either, the burden of proof is with them, to show that at the time this will was made, the deceased was of sound and disposing mind; that the rule, if they have a jury in determining this case, is with respect to conduct, or, if upon the whole evidence of the case, they are in doubt as to whether the testator was of sound mind, then they will find against his soundness of mind—

MR. PRATT—[Interrupting.] If the Court please, I will withdraw that question at present, for the purpose of getting through with this witness, as he is wishing to go to Napa; and for the further purpose of enabling to call Governor Haight, as he wishes to go away; and then we will raise the question.

THE COURT—If it can be done without prejudicing the case, this question can be settled sometime; and you could go on with the other witness, if you can reserve this general question.

MR. PRATT—Take the witness, Mr. Barnes.

*Cross-Examination, by MR. BARNES—Q.* Did you ever see Hawes in the family sociably, except when you were sent to visit?

A. Never.

Q. Did you have any social intercourse with him at Red Bank?

A. Never.

Q. Did he ever come to your house as a visitor?

A. Never—I say now, I believe he did come once.

Q. Was there any degree of social intimacy between you and him?

A. No; none.

Q. When was that he told you he did not want to leave property to his child, because he thought it would hurt him?

A. I did not say he thought it would hurt him; I did not say that.

Q. What did you state on the subject of his leaving his property to the children?

A. I said that he thought the best legacy he could leave his children, would be leaving his property to this Institution. I did not approve of children having large sums of money.

Q. Very well; that is what I ask you then. When was it that he told you the best legacy he could leave his children would be to the Eagle University; that he did not approve of leaving large sums of property to children?

A. It was ten days or a fortnight before his death.

Q. Did he ever speak of it to you before that?

A. No.

Q. Then I understand you to say you never talked with him about his family, or his domestic troubles, or about his wife?

A. Never, sir; never.

Q. And that he never talked with you about his posthumous property?

A. No.

Q. Did he ever fall into any violent passion while talking with you at any time, or while you were present?

A. Never.

Q. Did you visit him during the Fall of 1870 and '71, when Stebbins and the other gentlemen who were brought to him in connection with this University, was there?

A. I did, sir.

Q. You were there together, were you not?

A. Several times.

Q. Did you ever go there on any occasion by yourself, when others were not present?

A. Yes, sir.

Q. How often?

A. Two or three times; perhaps more.

Q. When was it that he first showed you what we now call the deed of foundation of the Mont Eagle University?

A. You mean the one just now that he executed?

Q. The one that is now before the public.

A. I think the first time I saw that particular deed, was on which it was executed—the 24th day of February.

Q. Had you ever seen any other?

A. Yes, sir.

Q. When first?

A. First in Paris.

Q. Was the one you saw in Paris identical with the one that he finally executed as you saw?

A. No.

Q. A different one?

A. In a measure different, yes.

Q. At the time you saw him in Paris, did you ever chat with him about it, or about its terms; or what was in it?

A. He gave it to me to read, but we had not conversed until that conversation about it.

Q. Did you read it?

A. Yes, sir.

Q. In his presence?

A. In his presence.

Q. After he came home from Europe, when was it that you first saw it—did you ever see that one again, that he showed you in Paris?

A. I think—in fact I might have seen it without recognizing it.

Q. When did you first see any other?

A. I think on the day that he executed it.

Q. Had you ever been there before you talked with him about it?

A. Yes, sir.

Q. Had he made any deed before that?

A. Yes, sir. Now that I recollect it, I did see the deed before the day it was executed.

Q. How many times before?

A. I think only once.

Q. When was that?

A. That was perhaps a week before he executed it.

Q. When he showed it to you, who was present?

A. I don't think there was anyone present.

Q. What was his purpose in showing it to you?

A. To ask me if I would become one of the trustees in the deed.

Q. Were you present when it was signed?

A. I was.

Q. Where did he take it from when he signed it or had it beforehand, if you know?

A. My recollection is not very clear, as to where he took it from; I think, however, from some drawer-table or writing-case that he had there.

Q. Did he read it over?

A. Yes, it was read in his presence at the time.

Q. Who read it?

A. I think Mr. Stebbins read it.

Q. Then he signed it?

A. Then he signed it.

Q. After he signed it, what was done?

A. It was delivered to Mr. Stebbins.

Q. Who delivered it?

A. Mr. Hawes.

Q. What did he say?

A. He said, "I deliver you this deed,"—I won't answer for the exact words—but the purport is, "Take this; you can do with it what you will;" something to that effect.

Q. Did you hear him tell Mr. Stebbins to take it down and get it



published in the "Bulletin," and see what the people would say about it?

A. I heard him speak to Mr. Stebbins in regard to publishing it.

Q. What did he say about that?

A. I could not tell you, sir.

Q. About what he said?

A. That he wished it published, and that it had better be published in two parts. That is, one part to-day, and another the following day.

Q. Why? Any reason for that?

A. No; I don't know that he did give a reason for it.

Q. Didn't he give any reason why he wanted it published?

A. If he did, I don't recollect it.

Q. Didn't he tell Mr. Stebbins, when he gave him that paper, to take it down to the "Bulletin," and see what the people would say about it?

A. I don't remember, sir.

Q. Were you ever present when any conversation was had between himself and you and the other trustees respecting the construction of that instrument?

A. Never, sir.

Q. Did you ever go there for the purpose of getting him to change it on that account?

A. I did not, sir.

Q. Do you know whether any of the trustees did?

A. I think they went there to see him in regard to it. Yes, sir.

Q. What transpired you don't know?

A. I don't know; I was away at the time.

Q. Were you present with Mr. Stebbins when he asked Mr. Stebbins to write out a funeral sermon, and come there to preach it at the foot of the bed?

A. No, sir.

Q. Did you ever hear of his doing that?

A. Never.

Q. Did he ever request you to come and sit by his bed and study over that deed of foundation?

A. No.

Q. After it was signed, did you ever hear it read again in his presence?

A. After it was signed, ever hear it read again in his presence?

Q. Yes.

A. Yes, sir.

Q. How many times?

A. Once.

Q. When was that?

A. It was a few days after it was signed.

Q. Did he ever read his will to you?

A. Never.

Q. I understand you to say he never talked in your presence at all about posthumous fame?

A. No.

Q. During any of these visits you were making there, did you see Mr. Washington Bartlett?

A. I think I met him one evening. Yes, sir.

Q. What were his relations to Mr. Hawes as far as you observed?

A. Quite friendly.

Q. Did ever you hear Mr. Hawes indulge in any profane, or vulgar, or indecent language?

A. I never did.

Q. You have stated that you always thought Mr. Hawes a shrewd lawyer; did ever you have any legal business with him?

A. Never, sir.

Q. Then you speak of his being a shrewd lawyer from what you generally understood?

A. Yes, sir.

Q. But from no personal knowledge of your own, or experience with him as a lawyer?

A. No, sir.

Q. You say he was thought to be an able man? Do you found that upon anything that you had yourself—personal knowledge of him—or is it simply from general impression?

A. I thought he was an able man from the course he pursued while he was in the Legislature. From the knowledge he had in drawing bills.

Q. Did you ever see him draw a bill?

A. No, sir; never drawing a bill, absolutely. I have seen him with the bill in his own handwriting; making alterations.

Q. What bills in his own handwriting did you see him make alterations in?

A. The bill I have forgotten now. A bill connected with San Mateo.

Q. For what purpose?

A. The general government of the county of San Mateo.

Q. Apart from his dealings in public matters, did you know anything of him really?

A. No, sir; very little.

Q. You say, then, he was very disagreeable in business matters? What do you found that upon?

A. Well, from many transactions I have heard of his.

Q. Anything from any knowledge of your own?

A. No; not from my own knowledge.

Q. Then all that opinion of yours is founded simply upon general reputation, is it?

A. It might be—but no; I include all the transactions of his.

Q. What did you know of him?

A. I could not mention any—

Q. Name one?

A. Well, his course in the Legislature.

Q. What did you have to do with him, that you could see he was disagreeable in business matters? In other words, I only want to get the extent of your knowledge and whether it is merely the reputation you heard about him, or whether you knew anything, and show the jury how far your opinion is valuable, or the reverse?

A. Well, sir; there are little things which I could hardly recollect, and yet they are part of my own knowledge; little transactions.

Q. Just give us one transaction that you know of that caused the foundation in your mind for the opinion that he was disagreeable in business?

A. Well, sir; I could not give you one.

Q. Did you ever have a transaction with him involving one dollar?

A. Yes, sir.

Q. What was it?

A. Well, at the time he left Paris, he left his shawl in one of the cabs there. He arrived at Havre and sent me back a little check (which is always given to those who ride in cabs) and requested me to claim it for him. I did it and recovered it.

MR. BARNES—I should think that would come under the head of a friendly office, to save a shawl, and not a business transaction. Did you ever have a business transaction with him involving one dollar?

A. I had a transaction with him at that time; you asked me anything where a dollar was spent; I paid some money for him at the time.

Q. How much did you pay?

A. I really don't remember; but Mr. Bates can tell you, sir; he repaid me.

Q. After you got home?

A. I believe, yes, sir. Yes, another thing, Mr. Barnes, when his little nephew was coming out, he requested me to let him come out at the same time. I did; and he made no provision for him to have a sleeping berth, and wrote me, requesting me to pay anything that might be absolutely necessary for him. That I did. I paid some money; I don't remember now how much; perhaps fifteen or twenty dollars which Mr. Bates, upon my presenting a note from Mr. Hawes, repaid.

Q. Then that was a transaction. The settlement of that transaction was with Mr. Bates, and not with Mr. Hawes?

A. No, sir; not with Mr. Hawes; Mr. Bates.

Q. Where did you find this boy Horace?

A. In Chicago.

Q. Where did you meet him?

A. Chicago.

Q. Yes, but where in Chicago; at the depot, or where?

A. At the hotel there.

Q. Who was with the boy there; anybody?

A. He was alone.

Q. Did he have any money?

A. Yes, sir, he had some money.

Q. Do you know how much?

A. No, I do not.

Q. Did you pay his expenses out?

A. No, he had his ticket paid, I think, but he had not money enough to pay for his sleeping car.

Q. Did he have money enough to get his food?

A. Yes, sir.

Q. Did you pay for his meals?

A. I did not. He paid for them, until, I believe, he had spent his money buying these candy boxes, and he came to me with the balance of it to keep it; he could not trust himself. Then I did pay for them.

Q. What was the balance he handed over to you?

A. That I could not tell you.

Q. About how much?

A. Ten or fifteen dollars.

Q. Did you ever have any conversation with Mr. Hawes, about those disbursements of yours?

A. Never.

Q. Did you ever hear that he found a great deal of fault with you, for your extravagance?

A. Never.

Q. Now, apart from this transaction, which you settled with Mr. Bates, did you ever have a pecuniary transaction at all, as with man and man?

A. No, sir, I never did that I recollect.

Q. What did you ever have to do with him, that you were led to say that Mr. Hawes considered his judgment better than that of any body else?

A. Mr. Barnes, I could not mention anything in particular, but that was his general feeling, or seemed to be?

Q. How do you know?

A. Because he had so—you know those things without being put in so many words. I could not tell you exactly.

Q. What is it? A gentleman of your intelligence would not entertain such decided views, without having something to found them on, or, at least, I am bound to presume so.

A. I could not tell you any particular transaction of any particular affairs.

Q. Nor any particular fact that leads you to give that particular opinion here?

A. No; no especial or particular fact. I have known the man for a long time, and during all that time I had that opinion.

Q. Did you ever have occasion to offer or oppose your judgment to his?

A. That I could not tell you. I do not remember any particular occasion. I have no doubt that I have.

Q. Well, what is it that makes you say what you do in respect to Mr. Hawes' judgment?

A. His opinion of his own judgment, you ask me for?

Q. Yes, sir.

A. Well, sir, I have told you that I cannot tell you in so many words, but that is the impression I have.

Q. What did you ever have to do with him, of your own knowledge and intercourse, that makes you say he was precise and exact in business matters, and so continued until he drew his last breath?

A. About little matters; about his house during his last illness.

Q. What was that fact, or facts?

A. In regard to some of his accounts—a settlement about the building of his house.

Q. What business did he transact within three hours of his death?

A. He requested me to call upon Mr. Paxson to inquire about a lot which he had put in his hands for sale; he was very desirous the lot should be sold. He said it was not mentioned in his will, nor in the deed of foundation, but it was a lot he had put aside to meet certain little expenses which he had to pay—some allowance he had to pay on account of his house he was building at Redwood City.

Q. You say he was more nervous and irritable than any man that you ever saw. What did you ever see him do that makes you say that?

A. Well, I have seen so many things, Mr. Barnes, that I could not give you any particular thing.

Q. Can you give us any fact or circumstance connected with the man upon which you base so sweeping an assertion as that he was the most nervous and irritable man you ever saw?

A. During all the time I knew him he was both irritable and nervous.

Q. Tell us one occasion.

A. I could not tell you one occasion.

Q. In respect to what thing?

A. That I could not tell you; in respect to every one and everybody.

Q. Tell us one fact or circumstance now upon which you base that sweeping assertion.

A. I could not tell you any one fact or circumstance.

Q. What fact or circumstance of him is within your personal knowledge that makes you say he was naturally very suspicious and cautious?

A. Because, if he was speaking of any one, no matter whether it was a gentleman, or any one that he had business with, any official, he always spoke of them with distrust.

Q. What sort of distrust?

A. Well, that he had no confidence in them; a general distrust.

Q. Distrust of what? Distrust that a man would kill him, or distrust of what?

A. No, not at all; of their honesty—of their ability.

Q. Well, now, whose honesty or ability did you ever hear him express a suspicion of?

A. Well, nearly all of the officers of San Mateo county, in times gone by.

Q. What did he suspect them of?

A. He suspected them of taking public moneys whenever they could.

Q. Were you one of the officers of San Mateo County?

A. I was at one time.

Q. How long were you such?

A. I think two years.

Q. What were you?

A. I was one of the Supervisors—President of the Board of Supervisors.

Q. Was it during this period that you heard Mr. Hawes express these views of the officers of San Mateo County?

A. During that and before—more before this period.

Q. What did you hear him say during your term of office?

A. I could not recall anything very particular.

Q. Well, give us the idea.

A. I could not give you anything especial—any especial occasion.

Q. Do you understand that he was generally suspicious that you were taking the public money?

A. I have no doubt of it, sir.

Q. Then you believe, in your mind, that Mr. Hawes suspected you of taking the public moneys, do you not?

A. He may have done so.

Q. What do you think?

A. I don't think he did.

Q. Oh! I thought he did. Anybody else except the County officers of San Mateo County, that he thought was stealing public moneys?

A. I could not tell you any instance.

MR. PRATT—You spoke of a bill for the general government of San Mateo County; is that the same bill or law under which they are operating now?

A. I think there have been certain changes.

Q. What was Mr. Hawes' general conduct and deportment towards his colleagues in the Legislature?

MR. BARNES—State what you know yourself?

A. Yes, sir.

MR. PRATT—Q. What you saw from your own observation?

A. I think it was disagreeable in every respect.

MR. BARNES—Q. What do you mean by disagreeable in every respect?

A. Well, it would be very difficult for me to explain any particular one. But it was so.

Q. You were not a Senator, were you?

A. No, sir.

Q. What were you?

A. I was an Assemblyman of San Mateo County.

Q. Now, what opportunity did you have to observe his conduct and demeanor towards his colleagues in the Senate?

A. I was frequently in the Senate Chamber.

Q. Tell us one time when you ever observed his conduct to be offensive and disagreeable to his colleagues in the Senate?

A. I could not specify any particular time I saw it.

Q. What did you see?

A. His disagreeable manner.

Q. What did he do?

A. He spoke harshly and rudely to his colleagues.

Q. To whom—what one?

A. I could not tell you any one in particular.

Q. What harsh and disagreeable things did you ever hear him say?

A. I could not mention any one particular thing.

HENRY H. HAIGHT, called for the Executor. Sworn.

*Examined by MR. PRATT*—Q. Governor, how long have you resided in California?

A. Since January, 1850.

Q. You are at the present time Governor of California, I believe?

A. Yes, sir.

Q. How long did you know Mr. Hawes?

A. I have known him since sometime in 1851, possibly in 1850. I do not recollect the exact time.

Q. Were you intimately and well acquainted with him?

A. Yes, sir.

Q. How long had you been intimately acquainted with him?

A. I knew Mr. Hawes quite well in 1851, and have known him more or less since that time. I knew him quite well in 1851.

Q. How often did you see Mr. Hawes, Governor, that is, during his last sickness, or during the last three or four months of his life?



A. He sent for me several times to go out and see him. I think it was at—I could not tell you how many times; I was there five times, I should think.

Q. Did you converse with him generally on the occasion of those visits?

A. Yes, sir.

Q. What was the subject of conversation?

A. We conversed upon miscellaneous topics. I think the main subject of our conversation was the disposition he proposed to make of his property, or a portion of his property with reference to founding the University—that was the main subject of conversation.

Q. When did he first speak to you of his intention to found any public institution?

MR. BARNES—I object as irrelevant and entirely immaterial and not in rebuttal.

THE COURT—I overrule the objection.

MR. BARNES—The Reporter will please note an exception.

THE WITNESS—I could not give the exact year; it was in 1858 or 1859, or 1860; I think 1859; probably, it might have been 1858.

MR. PRATT—Q. And may not have been until 1860. How many times probably did he talk with you on that subject?

A. I do not know myself. I was collecting some money at the time I speak of for an institution here in the city, and Mr. Hawes subscribed one hundred dollars to that, with quite a large number of others, and I think that was the commencement of our conversation on the subject.

Q. Can you fix the date of that transaction, Governor?

A. I could not with any exactness. I had intended to refresh my recollection. I have a subscription book, or Mr. Sawyer has it somewhere, the original subscription book containing that subscription. My impression is it was in 1859, in the summer. Dr. Cook and myself secured those subscriptions, but I think Mr. Hawes' subscription I obtained myself.

Q. Was his intention to found a public institution a subject of frequent or repeated conversation with you?

A. Yes, sir.

Q. From the time he spoke of it down to the time of his death?

A. Yes, sir; that is, it was referred to occasionally, I don't know how often.

Q. About how long prior to his death was your last conversation with him on that subject?

A. Well, I should think about two months. My recollection is not very distinct.

Q. Did he always express, or not, the same general views on the subject?

A. Well, when he first referred to it, his idea did not seem to be very settled or fixed. He used to refer to it occasionally, and, of course, with some modification every time.

Q. Did he ever express to you his general views as to the propriety or policy of leaving money to children?

A. I have no distinct recollection about that. I only recollect one remark which—and that was in reference to his disposition that he made recently, a short time before his death. He told me he had made very liberal provision for his children. That is the only thing I recollect of on this subject.

Q. Did he in that conversation express to you in reference to his own children his views of the propriety of leaving them money or some other heritage?

A. I have no recollection of his discussing the general policy either of his own children or of other children. He made the remark which I spoke of, and that is all that I recollect of that conversation.

Q. Did you ever suggest to him, or did you have any conversation with him about the probability of his will being contested?

A. I had some conversation with him as to the probability of it.

Q. What was that conversation, Governor?

A. Well, I could not give, of course, the language that was used. I recollect his speaking of the probability of his wife's contesting his will; and he told me she professed to be entirely satisfied with the disposition that he was making of his property. That was all that I recollect. I think I made some inquiries of him as to who was with him, or who were attending upon him during the sickness—in that connection.

Q. Do you recollect what reply he made as to Mrs. Hawes contesting the will, or what he thought about it?

A. Well, he expressed to me some doubt of his about the sincerity of her professing to be satisfied with the disposition of his property.

Q. About what time was that conversation?

A. Well, I should think it was some three months before his death.

Q. Who introduced this subject of conversation, Mr. Hawes or yourself?

A. My impression is that I did it in the form of an interrogatory as to whether his legal representatives would be satisfied with the disposition he was making of his property. I think it was an inquiry by myself.

Q. During these conversations with Mr. Hawes in his last sickness about the foundation of the Mont Eagle University, what was his manner in discussing that proposition?

A. Well, it was just his ordinary manner.

Q. Were any allusions made to his wife or family in those conversations, or the provision he intended to make for them?

A. I have no recollection of his speaking of the provision that he made for his wife. I recollect of his speaking—the remark that I have in my mind referred, I think, entirely to his children.

Q. Did Mr. Hawes ever speak to you on the subject of his posthumous fame?

A. Well, I have no distinct recollection of any remark on that subject, beyond the prediction of what the University would become after a lapse of time; although I have no distinct recollection of any remark on the subject by him, I think it is likely he did.

Q. In those conversations was there anything wild, or extravagant or remarkable, either in his manner or what he said?

MR. BARNES—Wait a moment. State what he said.

MR. PRATT—To state what he said, if the Court please, would not state what his manner was; that is the point; the principal subject of controversy here.

MR. BARNES—Separate the question properly.

THE COURT—The question is directed to his manner, and not to what he said; is that so?

MR. PRATT—I will put it in that form.

Q. Was there anything peculiar or extravagant in his manner when discussing these questions with you?

A. Nothing struck me so.

Q. Did he ever talk to you of his domestic troubles, or unhappiness?

A. We never had much conversation on that subject.

Q. Did he ever allude to it at all to you in any of these conversations?

A. I cannot recollect that he did.

Q. Do you recollect ever hearing him speak much of his children?

A. Occasionally. Speaking of them occasionally—

Q. [Interrupting.] What disposition or feeling did he manifest towards them?

A. Well, I always had the impression he was very much attached to his boy Horace. I do not know as I ever heard him mention the other one at all.

Q. Was there anything in the general character or life, habits, actions and methods of thought of Mr. Hawes, which distinguished him from ordinary men; that is to say, was he eccentric, or otherwise?

A. He was eccentric—peculiar in some things.

Q. What was his intellectual standard?

A. He stood very high intellectually; he ranked high intellectually.

Q. Was he an educated or an uneducated man?

A. I always had the impression he was very highly educated, but I—

Q. [Interrupting.] What was his temper and passions.

A. He was a man of rather violent temper, I think.

Q. What were his notions of Horace Hawes, and his abilities, capacities, sagacities, etc.?

A. He was extremely egotistical.

Q. What was his treatment and conduct towards those whom he regarded as his inferiors?

A. He was tyrannical and overbearing.

Q. What were his habits in regard to business transactions; that is to say, was he careless or otherwise?

A. Very close in money matters, and I always supposed him to be very exact in business matters, particularly.

Q. What was his persuasion of the uses and value of money and property?

A. Well, he was—I always regarded him as very fond of money.

Q. What was his temperament—was he nervous and irritable naturally, or the reverse?

A. Well, he was rather irritable, I think. I cannot say that I ever saw many instances of irritability myself. It is rather an impression that I have than founded upon any special instance of it. I can only recall one instance of his getting in a passion where I thought he was very unreasonable indeed.

Q. Please relate that?

A. We took an office together on Clay street, in 1858, and had occasion to move our book-shelves into the office. I had a large law library of English books, and he had a Spanish law library. He kept that in a case with glass doors. He employed a Mr. McEvoy, a carpenter, who is dead now, to put up the shelves; and the width of the under shelves—he had some large books, I think folios; on the

lower shelf there was not sufficient space for these books to stand up; and Mr. Hawes, according to my recollection of it, at the time had not given specific directions upon this subject as he ought to have done, but he was very much dissatisfied, and got into a violent passion and treated Mr. McEvoy, as I thought, very unbecomingly indeed. Mr. McEvoy left the book-case about three quarters finished, and went out of the office and just left it in that condition—shavings and everything. It remained so for a little while, and then Mr. Hawes told me that he had occasion to go out of the city, and wanted to know if I would have the kindness to have that book-case finished. I of course consented, and sent for Mr. McEvoy to go on and finish the book-case, and it would be paid for, or I would see it was paid for. So he went on and finished the book-case, and charged Mr. Hawes, I think, about twice the original contract price; but he said nothing on the subject. I believe I gave the bill to him and he gave me the check for it.

Q. How was he generally when opposed or contradicted in his peculiar actions and schemes and plans, was he patient or impatient under it?

A. He was extremely self-willed and impatient of contradiction.

Q. From all of your knowledge and observation and intercourse with Mr. Hawes, did you entertain a settled opinion as to his sanity or insanity so long as you knew him?

MR. BARNES—You mean from his own personal intercourse?

MR. PRATT—Yes, sir.

WITNESS—I never had—

MR. BARNES—We do not want your opinion yet.

MR. PRATT—Q. I merely ask now whether you have a settled opinion on that subject?

THE COURT—What was the subject?

MR. PRATT—As to the question of sanity or insanity.

A. Well, I have an opinion upon that subject, or had. Of course I have an opinion upon that subject.

Q. What is that opinion?

MR. BARNES—I object.

MR. PRATT—If the Court please, I think we had better finish the argument of that question and settle it now.

MR. BARNES—Hadh't we better cross-examine him first?

MR. PRATT—Yes, sir.

*Cross-Examination*, by MR. BARNES—Q. You say you have heard him express an opinion, or say something about his making a very liberal provision for his children. That was the topic. Now I want you to tell me and the jury what he said.

A. Well, of course, it would be impossible for me to give the exact words that he used; I can give them very near, or rather, I can give the substance of it. I would not undertake to give the words at all; I think I can give very nearly the exact substance. He said he had made more liberal provision for his children than was made for the children of most of the crowned heads of Europe. That is about the substance of it. In other words, that the children of royal families had not any more liberal provision than he had made for his children; that is about the amount of it.

Q. Had you seen his will at that time?

A. No, sir, I never saw the will, unless I read it in the newspapers; I think it is quite possible I read it in the newspapers.

Q. I understand you to say you never had any conversation with him, about his domestic troubles?

A. I do not recollect any.

Q. At any time, if you had any, it was of not any kind to make any impression upon your mind, one way or the other?

A. No, sir.

Q. You say that he never had any conversation with you upon the subject of his posthumous fame, or his own greatness, except it might be inferred from his speaking of what the University would be?

A. That is all I recollect.

Q. What did he say; do you remember?

A. Well, he spoke of its future expansion, and of the fact that he was founding it, not for five years, or twenty years, or fifty, or even a hundred years, but for the future—some thousands.

Q. How far in the future, did his prophetic eye reach?

A. He projected his vision very far into futurity.

Q. About how far?

A. The exact distance, Mr. Barnes, I would not undertake to give you.

Q. Well, I would like to get the idea of the thousands of years; what was the idea conveyed to your mind?

A. The impression left upon my mind is rather indefinite, as you might well suppose. He spoke more particularly of one hundred years hence. That seemed to be fixed in his mind as a certain culminating point in the institution; that is, its endowments then would become available, and it would have a large number of students, and secure, by that time, so absolutely the public confidence, that it would be the greatest University on this side of the continent, and perhaps, the greatest one on the continent.

Q. Do you remember his saying to you at this conversation, that the statutes of Mont Eagle University would become the law of the whole world.

A. No, sir.

Q. Anything to that effect?

A. No, sir.

Q. Did he show you the deed of foundation?

A. My impression is that he gave me a copy of it. I am trying to recall whether I had a copy. He told me to get a copy from Mr. Washington Bartlett. My impression is I had a copy.

Q. Didn't he have a number of copies of it printed?

A. Yes, sir.

Q. Did he ever ask your opinion about the character or practicability of that instrument?

A. Yes, sir; that is my general opinion upon the scheme.

Q. Did you give him one?

A. Well, I gave him one.

Q. Did you suggest any changes?

A. There was one in the deed which—one or two things—in reference to which I made some suggestions. One was—I do not know—that you desire to know.

Q. Yes, sir; I want to hear?

A. One was a provision requiring a certain amount of endowments outside, before his endowment took any effect. I expressed—

Q. Do you recollect now, Governor, what the amount to be raised from outside sources was before it should take effect?

A. I would not undertake to give it. There was a certain amount within a number of years, and a certain additional amount within a certain other number of years. My recollection may not be accurate.

Q. Let me ask you if it was about like this:

MR. BARTLETT—There are two deeds; which one of them?

MR. BARNES—This is the deed of which Mr. Howard spoke—the one of the seventeenth of August was not in evidence at all.

Q. Which one was it you say?

A. One that was executed in February. I have no recollection whatever of the date.

Q. In which Mr. Stebbins and Mr. Howard and others were trustees?

WITNESS—I have no recollection of the date. My impression is that what he gave away was a draft of a deed as he proposed to execute it. I do not think any date was filled in.

Q. Did the deed that you say, and the part to which you directed his attention, contain a provision to provide that from independent donations and other sources entirely irrespective of what he gave, there should be raised, and that before his foundation took effect—so that it could not be diverted from the purposes of the trust; in fifteen years, \$100,000; thirty years, \$500,000; fifty years, \$1,500,000; and one hundred years, \$4,000,000, making in all \$6,000,000 from outside sources before his should take effect?

A. Yes, I recollect that, although my impression was that the \$4,000,000 was inclusive of previous donations. My impression was that the \$4,000,000 was inclusive of the other donations. I suggested to Mr. Hawes that that was perhaps an objectionable feature in his disposition; and his reply to me was that if the institution commanded public confidence it would receive that amount of money, and if it did not, he would rather it would die. That is about the amount of it.

Q. Did he tell you at that time what was to become of the property at the end of the one hundred years, if they didn't raise these several millions of dollars?

A. No, sir; I don't think that he did.

Q. Did he say anything about its going to the Smithsonian Institute at Washington?

A. I have no recollection, possibly.

Q. Was that the only suggestion you made him about it?

A. I do not recall any other now. It struck me that there was some other, but I do not now recall it. There may have been other suggestions.

Q. Was there any degree of social intimacy between you and him; I mean, did you visit his family, and he your's?

A. Not habitually.

Q. Did you at all?

A. He never visited in my house at all, and I never visited in his before his sickness, that I recollect of—Oh, I have been at his house perhaps four or five times. I was thinking at the moment I only dined with him once. We went down to the 12th District Court one time, and I took dinner with—and it is possible I may have staid there all night.

Q. When was that?

A. A great many years ago. That must have been in 1859; I should think 1860, perhaps.



Q. Then of his demeanor toward his family you have no personal knowledge?

A. No sir; except—

Q. Your opinion hereafter, if you should express one, would be given entirely independent of that, but founded upon those things you have mentioned?

A. Yes sir.

Q. Did you ever talk with Mr. Hawes on the subject of religion or did he ever talk with you about it?

A. Very little. I could hardly say that we had any conversation upon the subject of religion, except it was of the most casual kind.

Q. Never was a topic of conversation?

A. No sir. He questioned me as to the effect of the adjacent property upon the building of the Cathedral, but this is not a religious subject.

Q. Did he ever talk to you about his provision for his children except on this occasion that he told you they had been more liberally provided for than the children of the crowned heads of Europe?

A. Well, I have no recollection of any other conversation than that; he used to talk about his boy, and about the advantages he was giving him, the arrangement he had made with Prof. Evans to travel with him, etc.; his mind seemed to be very much engaged with it; he spoke of the extraordinary advantage he was giving his son in Europe.

Q. He never spoke to you of the boy in connection with his mother?

A. Well, I think it is quite possible that he did, but it would be impossible for me to give any—I think that there were some allusions to that subject in his conversation, but I have no distinct recollection what the nature was.

Q. You say that you spoke to him once about his family as to whether they might be satisfied with that will, and you inquired who were attending him in that connection. What did you mean by that?

A. Well, at the time of this conversation in reference to the probability of Mrs. Hawes attacking the will on the ground of insanity, I asked him the question, I think for the purpose partly out of curiosity to see whether his mind was dwelling upon the testimony which would be likely to be introduced in the event of such a contest after his death, and I saw that he had considered it, somewhat in his own mind.

Q. He had?

A. Yes, sir.

Q. What did he say about that that made you think he had considered the testimony that might be brought up as to his being insane when he was gone?

A. Well, I don't know whether I could give you any remark he made, but that was the impression left upon my mind.

Q. That he was afraid they would contest on the ground of his being insane?

A. Yes; on the ground of his being insane.

Q. But what he said, you do not remember?

A. I do not. It is my impression, although, of course my mind has been so occupied with other things, and was at that time, that I did not give much thought to the subject, and my recollection of it is not as distinct as it might be. Mr. Hawes sent for me several times before I got out to see him. I mention that in connection with my indistinct recollection at this time. My recollection is that the conversa-

tion commenced by an inquiry by me, and my further impression is that it was suggested, though that I am not absolutely certain of by some remark that had been made to me in reference to the probability of Mrs. Hawes seeking to set it aside.

Q. Did he use any profane or indecent or vulgar language in talking to you?

A. No, sir; nothing whatever. His manner was very quiet, and an entire absence of any excitement in his manner at the time.

Q. You say he expressed some doubt as to Mrs. Hawes' sincerity when she appeared to be satisfied. What did he say?

A. He said she professes to be entirely satisfied. And he went on, and I cannot give you the words now. He went on to give me some remarks equivalent to expressing a belief in his mind that she would attack it, and set it aside if she could—or that she might.

Q. He had a consciousness on his mind that she would?

A. He seemed to be suspicious that she might.

Q. What is the basis of the view that you expressed that he was extremely egotistical?

A. Well, it was from a thousand things that occurred, as it has in the course of my acquaintance with him. I knew him pretty well in 1851. We occupied adjoining offices at that time in the Exchange Building, on the corner of Clay and Kearny; and, of course, I heard various expressions from him from time to time, which would give me sufficient guide to that peculiarity of his character. And in 1858 we rented two offices together. I met him on the street in 1858; that was purely accidental. I told him I was about changing my office, and he proposed that we should take an office together; that is, without any business relations together, but simply to rent an office together. We went then and took these two rooms on Clay street. He occupied one and I occupied the other; and we occupied the office in that way until, I think, he was elected to the Legislature, then we rented another office in the same building, and I don't know whether that was before or after his election to the Senate.

Q. In which office was it that he had this trouble with McEvoy?

A. In the office we occupied in 1858.

Q. You say he treated Mr. McEvoy very improperly; what did he do?

A. His manner was extremely unbecoming for a man of his standing, education and position. Mr. McEvoy was a very respectable man, and his manner was extremely offensive and abusive.

Q. What did he do and say?

A. You know very well I could not give you the words. I have no recollection of his language at this time, but his manner and language was such as was extremely offensive. Mr. McEvoy was much offended, and had a perfect right to be. I thought Mr. Hawes' conduct was unbecoming and unjustifiable.

Q. That was the only occasion when ever you saw him in a violent temper?

A. I have no recollection of any other occasion than that, but he was in the habit of using very unmeasured language in speaking of people he didn't like.

Q. I would like to ask you now what your opinion is. I understand you to say in answer to that question that you have an opinion, "or rather you had?"

to you or having made such an excellent legacy to his children, you understand him to refer exclusively to the amount of money he had left them, or to include his reputation and fame, etc.?

A. My understanding was that he referred merely to the arrangements.

Q. Was there anything else in the same connection with the reputation that he would leave them, or the reputation of the institution that he was going to found?

A. Well, I answer in the negative to that. I answer that it is very probable, but I am not certain. I have no certain recollection on that subject. I think it is quite possible.

Q. About what time was it that you examined this deed of foundation? Let me ask you if it was prior to the first of February?

A. Well, I could not locate the date with any definiteness. When I went out to see him, it was in compliance with a request, and having a great many things upon my own mind at that time—

Q. Can you fix the time relatively and approximately? Was it before his death?

A. Well, I could not. I could tell you, however, on the subject, and I only give you my recollection of that—in that I may have been taken, possibly, but my impression is, that the draft of the deed that he showed me subjected the whole of the property, including the eighty-acre tract on which he founded, or intended to found the University, or the site of the University, and I suggested that he should effect a forfeiture in the event of failing to get the additional donations; and it is my impression—I think or I supposed that in consequence of that suggestion of mine, he excepted, as I understood it, though I have no personal knowledge of it—I understood it from Stebbins that he excepted the eighty-acre tract from the University was to be located; he excepted that from the fund, so as to give persons who chose to make donations an assurance that there would be something certain aside from continuing the

## AFTERNOON.

The Court met at two p. m., and the arguments of questions of law being unfinished, the jury were again dismissed till ten o'clock to-morrow morning.

After a discussion of the question as to whether the proponent should be allowed to produce new evidence as to the general sanity of the deceased, the Court delivered the following decision:

Contestant objected to any questions to witness, as to the sanity of deceased, for the reason:

*First*—That the party propounding the will is bound upon his evidence-in-chief, to prove to the satisfaction of the Court that the paper in question does declare the will of the deceased, and that the supposed testator at the time of making and publishing the documents here propounded for probate, was of sound and disposing mind and memory, and cited the following: (Act concerning Wills, 2 *Hitt, Gen. L.* Art. 7326, § 1; 3 *Id.*, *Gen. L.* Art 9177-8; 2 *N. Y., Rev. St.*, p. 57, § 1; *Mass., Rev. St.*, § 1-5; *Williams, Exr., v. Robinson*, 42 *Vt.* 648; *Delafield v. Parish*, 25 *N. Y.*, 34 and cases cited; *Crowningshield v. Crowningshield*, 2 *Gray*, 526; *Barry v. Buttin*, 1 *Curteis, Ecc. Rep.*, 687; *Id. v. Id.*, 2 *Moore's Privy Council case* 480, 1837; *Browning v. Budd*, 6 *Moore, Pr. C. Cas.* 431, 1848; *Harwood v. Baker*, 3 *Moore, Pr. C. Cas.* 297, 1840; *Paske v. Ollat*, 2 *Phillimore* 232; *Phelps v. Hartwell*, 1 *Mass.* 71; *Gerrish v. Nason*, 22 *Maine*, 441; *Comstock v. Hadlyme*, 8 *Conn.* 261; *Potts v. House*, 6 *Geo.* 354-5; *Ross v. Gould*, 5 *Grif.* 173; *Baxter v. Abbott*, 7 *Gray*, 83; *Newhouse v. Goodwin*, 17 *Wend. passim*; *Comstock v. Hadlyme*, 8 *Conn.* 261.)

*Second*—That the presumption of mental competency is not the same in the case of will as in the case of other instruments—in the latter, sanity is presumed, in the former it must be proved. (*Gerrish v. Nason*, 22 *Me.*, 441; *Brooks v. Barrett*, 7 *Pick.* 94; *Cilley v. Cilley*, 34, 1, *Me.*, 162; *Powell v. Duise*, *Id.* 81-2.)

*Third*—That the *onus probandi* being imposed on the proponent of the will, the burden is not shifted during the progress of the trial, and is not removed by proof of the *factum* of the will and of testamentary capacity by the mouths of attesting witnesses, but remains with the party setting up the will. (*Delafield v. Parish, supra*; *Ross v. Gould*, 5 *Grif.*, 173.)

*Fourth*—The proponent cannot keep back his testimony on a material point in his case-in-chief, until he has drawn the fire of the contestant. If he wilfully reserves such testimony, the Court should not allow him to come in and make out his case after the contestant has rested. (*Kohler v. Wells, Fargo & Co.*, 26 *Cal.* 69; *Reese v. Smith*, 2 *Stark* 32; *Brown v. Murray, R. and M.*, 254; *Jones v. Kennedy*, 11 *Pick.* 128; *Holbrook v. McBride*, 4 *Gray*, 215; *Cushing v. Billings*, 2 *Conn.* 158; *Silverman v. Foreman*, 3 *E. D. Smith*, 323; *Hastings v. Palmer*, 20 *Wend.* 225, and cases cited.)

NOTE—Proponents of will after request failed to furnish a list of their authorities.

## OPINION OF THE COURT ON THE BURDEN OF PROOF.

The question discussed, arises upon the interrogatory propounded to the witness, in regard to his opinion of decedent's sanity. Its con-

sideration involves a determination of another question, and that is whether or not the parties seeking to establish the will, were bound to exhaust their evidence on that subject before they closed their case—this last question depending upon still another, to wit, upon whom is cast the burden of proof, as to the sanity of the testator, the proponents of the will, or the contestants.

If the burden of proof be upon the proponents, it is conceded that they are required to exhaust their proof upon that subject, before they close. They cannot put in a part, and reserve the remainder of their testimony, and this rule is founded on good reasons, not now necessary to state.

If the burden of proof be on the contestants, then the proponents were not required to establish the fact of sanity in the first instance; this fact was presumed, and upon the contestants closing, they would be entitled to answer the case made by the contestants with new evidence, such evidence as they could have introduced before they closed in chief, if the burden of proof had been upon them.

I have invited the fullest discussion of the question presented, because of its importance, not only as it affects the evidence now sought to be introduced, but because it will determine the instructions I shall give to the jury upon this particular branch of the case, and it may be seen that in a case where the evidence is conflicting, or evenly balanced, it might have an important influence in guiding to the conclusion to which the jury would arrive.

I am gratified at the research and ability evinced in the argument, on both sides.

There is great conflict of authority in the Courts of the various States, as to which party, proponent or contestant, shall take the burden of proof on the question of sanity, upon the probate of wills.

I have not the time, nor do I consider it necessary to review the vast amount of adjudicated cases, and other authorities cited and commented upon in arguments. I think the conclusions reached are applicable to all cases of insanity, partial or general, and that the analogies of pleading at common law, strengthen, rather than weaken these conclusions.

There is no dispute upon the proposition of law, that as a general rule, *sanity must be presumed*, and that *insanity must be proved*.

This is more than a general rule; it is a rule of almost universal application, the exceptions, if any, being such and such only as the law itself creates.

Does the law make an exception as to wills? If so, in the probate of wills, are we governed by the general rule, or does the probate fall within the exceptions?

If we find that the Statutes of California, by fair construction and implication make an exception to this general rule in this class of cases, we are bound to make those statutes our guide, irrespective of the dicta or decisions of Courts of other States of however high authority—even though they were in unison.

These decisions are authority only as they construe statutes similar provisions to our own, and it is to be regretted that we have no adjudications from our own Supreme Court to direct us.

The statutes, section twenty-two of the Probate Act, provides as follows: "If none of the subscribing witnesses reside in the County at the time appointed for proving the will, the Court may admit the testimony of other witnesses to prove the sanity of the testator, and

the execution of the will; and as evidence of the execution, it may admit proof of the hand-writing of the testator, and of the subscribing witnesses or any of them."

Now, if this general rule that sanity must be presumed be applicable, we find a waste of words in allowing proof of sanity to be made by others than the subscribing witnesses. Why require it to be proved at all, if it is already presumed.

Again, section nineteen is as follows: "If no person shall appear to contest the probate of a will, the Court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed in all particulars as required by law, and the testator was of sound mind at the time of its execution."

If this general rule is applicable, here is another waste of language encumbering this section with the useless requirement, that the one subscribing witness examined, shall testify "that the testator was of sound mind," etc.

It is contended, however, that the provisions of this last section are applicable only when there is no contest, and that where there is a contest, the parties contesting must show the insanity. Whilst it is true that the section applies where there is no contest, yet the force of the inference is not at all lessened.

It is not an unfair way to state the proposition thus, even in cases where there is no controversy, you must show the sanity of the testator, but in such cases you may probate the will upon the testimony of one of the subscribing witnesses, if that witness can prove this fact of sanity with other facts in the section mentioned.

Now, if the rule is changed upon controversy, then this is the result to which we are forced; we have an allegation which, whilst undenied, can not be presumed to be true, and must be proved by at least one witness; the same allegation being denied, is presumed to be true, and is consequently in the absence of any testimony, established without any witness.

It might, in a case readily imagined, be much easier to establish a will by contesting it, than by admitting its validity; for instance, the two subscribing witnesses may have attested the will in good faith, and yet may have changed their opinion of the testator's sanity, and every one else may agree in their last opinion; now, if no one opposes, the will cannot be established because you have not even one witness to the sanity, but if any one opposes and denies the sanity, you need only inquire as to the *factum* of the will, and without further proof the will must be established.

If any doubt should linger as to the correctness of this deduction, it will be set at rest by considering the twenty-fourth section of the same Act, which is as follows:

"If the Court shall be satisfied upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator at the time of the execution was of sound and disposing mind, and not under restraint, undue influence, or fraudulent misrepresentation, a certificate of the proof and the facts found, signed by the Probate Judge, and attested by the seal of the Court, shall be attached to the will."

I have emphasized the words *proofs taken* in the reading of the section, to direct attention to them in this connection.

The Court must be satisfied from the proof taken, or the facts found by the jury. This embraces both classes of cases, contested as



well as uncontested, because there could be no facts found by the jury unless opposition was made.

The presumptions would be the same, whether tried with or without a jury; and the burden of proof must be the same in the one case or the other. If tried by the Court, the Court must be satisfied from the proof taken that certain facts exist, and among them the fact of a sound and disposing mind.

If this general rule which we have been considering is applicable upon the proof of wills, then these words "proofs taken" subserves no purpose in the Act, the presumption would be all sufficient without that which the statute so plainly requires, to wit, the "proof taken" upon the subject.

A fair construction of these provisions of our statutes, I think, warrants the conclusion that the "sound mind" required in the statute of wills must be shown to have existed in the party whose scrip is proposed for probate, and that this is an affirmative fact which must be proved by the party propounding the will. That these statutes create an exception to the general rule that sanity is presumed, and that the burden of the proof of sanity is upon the proponents of the will. That they should have put in all the direct testimony they intended to rely upon in making out their case. It is conceded, that in case the burden of proof is on the proponents, they have no right to introduce now any further testimony, except such as is strictly in rebuttal of the case made by the contestant. The law as to the order of proof is admitted to be as is claimed by the contestant, and the *discretion* of the Court is not appealed to, both parties claim to stand on their legal rights. Evidence tending to prove partial insanity, as distinguished from general insanity, does not change the rule.

The objection of contestant is sustained.

#### FOURTEENTH DAY.

WEDNESDAY, NOVEMBER 29, 1871.

Here a discussion was had between opposing counsel as to the possession of the official short-hand report, the conclusion of which discussion was postponed until two o'clock p. m., or until Mr. Osbourn, the Official Reporter, should be present in Court.

WASHINGTON BARTLETT, called for the Executor. Sworn.

*Examined* by MR. PRATT—Q. How long have you resided in San Francisco?

A. Since November, 1849.

Q. Were you acquainted with Mr. Hawes in his lifetime?

A. I was.

Q. When and how did you first become acquainted with him?

A. I knew of him, and I think met him, soon after my arrival here. My acquaintance with him has continued ever since.

Q. You say you arrived here in 1849. What was Mr. Hawes' position at that time?

A. He was Prefect, I think.

MR. BARNES—I would like to inquire the object of this testimony.

MR. PRATT—Q. Do you recollect, Mr. Bartlett, of an organization here in early times known as the “Hounds”?

MR. BARNES—Wait a moment, I object.

MR. PRATT—What is the ground of your objection?

MR. BARNES—That it is irrelevant and immaterial. I do not know what the “Hounds” were.

MR. PRATT—I suppose the general proposition will be conceded that any testimony that tends to explain or counteract any of the evidence offered by the counsel on the other side will be admissible. Now, the testimony that I propose in this connection is, whether this will have this tendency in the minds of the jury. They have put themselves to a great deal of distress to show that Mr. Hawes was sometimes fearful of assassination.

MR. BARNES—By his wife?

MR. PRATT—That at one time he declined to travel in the country because he was afraid he might be assassinated; and, in connection with that, she shows the fact that at one time he had been mobbed and hooted at, on account of some public legislation. Now, in direct response to that proposition I propose to show that at that time there was an organization of desperate men in this community known as “Hounds”; that Mr. Hawes was particularly active, as it was believed, in putting down that organization, and in framing an Act by which to break up the system of general robbery which was carried on; that thereby he made enemies, personal enemies, of a large number of desperate people; and believed that the country was full of these enemies. The question is simply whether it can have any legitimate tendency to explain the conduct of Mr. Hawes, or his fears for assassination.

THE COURT—[After further discussion.] I overrule the objection.

MR. PRATT—Will you state, Mr. Barnes, whether you know anything about the organization, or what its character was?

MR. BARNES—I do not know anything about it.

MR. PRATT—Mr. Bartlett, I should have said.

THE WITNESS—I understood there was such an organization, but it existed before I arrived in the country. I knew personally, of the existence of the “Hounds.” I understood that it was notorious when I came here, and that for a long time afterwards, it had existed.

MR. BARNES—Q. You heard so. I move to strike this out.

THE WITNESS—Yes, sir.

MR. PRATT—Q. It was not during your time?

A. No, sir.

Q. Was it after your arrival here, a matter of general repute that such an organization had existed?

MR. BARNES—Wait a moment. I object.

MR. PRATT—I will take the ruling of the Court.

THE COURT—I sustain the objection.

MR. PRATT—Q. When did you first become intimately acquainted with Mr. Hawes?

A. In 1855 or 1856, just before, or after the Consolidation Bill was introduced in the Legislature.

Q. How did that intimacy arise, and what was its extent?

A. Well, Mr. Hawes had prepared the bill known as the Consolidation Bill, and was very anxious to have it adopted by the Legislature. I was at the time engaged in editing a newspaper here, and he talked with myself and brothers, who were my partners, about that

bill, explaining it, and took a great deal of pains to do so, with a view of having us cordially support the measure.

Q. Did you, of your knowledge, know anything about the general or newspaper abuse of Mr. Hawes?

MR. BARNES—I object.

MR. PRATT—Q. At that time, and following?

MR. BARNES—I object.

THE COURT—It is overruled.

THE WITNESS—I know there was considerable opposition, and some of it of a personal character, against the measure, and Mr. Hawes in connection with it, by the newspapers. Some of them supported the measure, and others opposed it.

Q. How long did that abuse continue through the newspapers, and what was its extent?

MR. BARNES—I didn't understand him to say abuse at all. He said there was considerable opposition to it, that some papers were in favor of it, and some against it, and that the controversy partook something of a personal character.

MR. PRATT—Was there any newspaper abuse of Mr. Hawes, personally?

MR. BARNES—I object to that. It is characterizing it—if you want to prove it, produce the papers.

MR. PRATT—What did the newspapers say about Mr. Hawes, personally?

MR. BARNES—I object to this, as hearsay. They ask for a newspaper opinion of Mr. Hawes in 1855. Let them produce the newspapers; but to ask this witness, did not the newspapers abuse Mr. Hawes a great deal in 1855, this question is improper in its form, it is hearsay, and better evidence can be had.

THE COURT—I will hear Mr. Pratt on that proposition.

MR. PRATT—I apprehend, your Honor, it simply involves the same question I suggested before; if we can show by this witness, or any other, what his belief of Mr. Hawes' state of mind or intelligence was.

THE COURT—I think these hypothetical questions assume that.

MR. PRATT—If we can show by this witness, or any other, that at any time the papers poured a most scurrilous abuse upon him generally—

THE COURT—[Interrupting.] The best way to do that is to get the papers.

MR. PRATT—I take the ruling of the Court on that.

THE COURT—I think it is objectionable on that ground.

MR. PRATT—Q. Do you know, Mr. Bartlett, anything about a demonstration made by any mob against Mr. Hawes?

MR. BARNES—Of your personal knowledge?

WITNESS—Yes; I do.

MR. PRATT—State when that occurred, and the circumstances, and what it was?

A. Well, when the Legislature adjourned after having passed or adopted the Consolidation Act, I happened to be in Sacramento at the time of the adjournment, and came down in the boat with a part of the members of the Legislature, and among others Mr. Hawes came down. When the boat landed we noticed quite a large crowd of men on the wharf with transparencies; on one side of these transparencies, most of them, I think, if not all, was rather complimentary inscriptions, all of them referring to the Consolidation Act in some way or other; and

on the reverse was—on the other side—just the reverse of complimentary. I recollect one device was, a negro crouching down in the corner of a fence. The meaning was, that in the bill there was something that did not appear, some secret object. I do not recollect any of the other inscriptions or devices. But when the boat landed, this crowd gathered behind the passengers, the rest of us that came up the wharf, and went jeering along up—jeering Mr. Hawes as the father of the Consolidation Bill. There was no personal attack made upon him, or anything of that kind.

Q. How far did this crowd follow Mr. Hawes?

A. I do not recollect. I do not know that I saw Mr. Hawes much after we left the boat.

Q. You say you became intimate with Mr. Hawes in 1855. State how long that intimacy continued; whether it had any interruption or not?

A. Well, it continued to his death. We met sometimes very frequently for the space of weeks or months, and then again it would be months or weeks before we met at all; but whenever we met it was very friendly, always.

Q. When did you first begin to visit Mr. Hawes' family at his house?

A. I visited him first, with his wife, I think, in 1862.

Q. Where was that?

A. When they were boarding, I think, on the corner of Lombard and Stockton street.

Q. State whether or not Mr. Hawes was in the habit of entertaining company at his house?

A. I do not think he was to any great extent. I think it was generally understood that persons who went there, went to see Mrs. Hawes, not him particularly.

MR. BARNES—Q. Let me ask you to repeat that question. You say you understood that it was?

A. I say that is my opinion about it.

MR. BARNES—I move to strike that out. We do not want the opinion of the witness that persons who went there went to see Mrs. Hawes, and not him.

MR. PRATT—It is already shown that the witness was very intimate with Mr. Hawes and his family. Now, I ask him, from his knowledge of his habits and method of living, whether Mr. Hawes himself would entertain company, or whether it was not understood men who called there to see him went on business only?

MR. BARNES—I object to that; it is utterly incompetent. We have already in evidence that he did entertain one, the very admirable gentleman here on the stand. He can state what he went there for and what his business was there. I cannot see that the gentleman is an expert as to visits that people paid to the gentleman's house.

THE COURT—Let him state what he knows of his own knowledge.

MR. BARNES—State who went there, and what they went there for. If he kept a tally himself of the people who went to Mr. Hawes' house, and what they went there for, let us have it.

MR. PRATT—I do not know anything more important than to prove generally the habits and the life of the deceased; and the great question here, and the object of the testimony is to show by this witness that everybody who went to see Mr. Hawes went there on business, and that he was perhaps secret in his habits of business, and

private; and that he did not want or desire to be interrupted by Mr. Hawes when he was transacting business about his house; and that it had a tendency to annoy and confuse him when she did, and made him sometimes violent and peevish.

THE COURT—You ask him the question whether the people who went there went to see Mr. or Mrs. Hawes? If he knows, let him state.

MR. BARNES—I object to it as immaterial, and not testimony in rebuttal at all.

THE COURT—Except of his knowledge, I overrule that objection.

Q. From your knowledge and intimacy with Mr. Hawes and his family, what were his habits as to entertaining company?

MR. BARNES—I object.

THE COURT—I overrule the objection.

THE WITNESS—I did not know of his receiving persons at his house, or entertaining them there to any extent. I do not know that I knew of any one that visited him to expect to be entertained by him.

MR. BARNES—Louder!

WITNESS—I do not remember of any one's being there who went there with the expectation of meeting him and being entertained by him.

MR. PRATT—Q. For what purpose, from your knowledge or observation of him and people there to see Mr. Hawes, did they go there for?

MR. BARNES—I object to that. If they want to prove his habits, prove what the man did; prove what the man did—let the witness state who went there and what they went there for.

MR. PRATT—Very well; I will put the question in that form.

Q. From your knowledge and observation what transpired between Mr. Hawes and the people who went there to see him?

A. I think most of them went there to see him on business. Nearly all of those whom I saw went there for that purpose.

Q. When did your first visit to Mr. Hawes' family take place at Redwood?

A. In 1863; I think it was in May, 1863.

Q. How did you happen to go there on that occasion?

A. The first time I went there I had been out somewhere gunning, and Mr. Hawes asked me why I did not go down to his place when I went out; that there was a great many birds there, and he had horses on the place and other things; Mrs. Hawes was there and she would be glad to see me—I knew her, and I would no doubt find it pleasant; and urged me to come. He was then in the city.

Q. Was there any conversation on that occasion between you and Mrs. Hawes in regard to Mr. Hawes' jealousy?

A. Not the first time I visited there. I was there during 1863 several times.

Q. When did that conversation, if any such occurred, take place?

A. It was subsequent to 1863. I do not recollect exactly whether it was in 1863, or subsequent to that time; there was some little conversation of that kind.

Q. How did that conversation arise?

MR. BARNES—I object. That is irrelevant and immaterial; and the conversation, too.

THE COURT—Mrs. Hawes said something about the conversation in her testimony.

MR. BARNES—If this is for the purpose of contradicting her, certainly it is not competent for the counsel who made her his own witness; and she answered this question which he answered.

THE COURT—[To Mr. Pratt]—I will hear you state its materiality. When he first made the remark, I did not think that you put Mrs. Hawes on the stand.

MR. PRATT—It is material in two ways. In the first place, there has been considerable said on the other side, and there is a great deal said about jealousy of Mr. Bartlett and some others; and I apprehend that anything which can be produced from this witness, or any other, which tends to explain that jealousy will be in direct rebuttal of their case, which tends to explain or counteract it.

THE COURT—Will this explain it?

MR. PRATT—Well, yes, in a measure; and besides that, it will place Mrs. Hawes in this position. She insisted upon Mr. Bartlett going there at that time, and after he was there, informed him that Mr. Hawes was jealous of him. Now, either it was not true that Mr. Hawes was jealous, on the one hand, or on the other hand, it must be true that he was, and Mrs. Hawes knew that fact; knew that Mr. Bartlett's presence there was disagreeable and annoying to him; and yet persisted and insisted upon his coming there, apparently for the very purpose of annoying him. In either view of the case, it is perfectly competent testimony for this jury to have all of those facts and circumstances having a tendency to explain the ultimate effect of the apparent dislike and difficulty between Mr. Hawes and his wife upon a rational basis—rational grounds.

MR. BARNES—Now, if the Court please, the evidence of the witness, so far as it tends to prove that he met Mr. Hawes shortly after he came to this country in 1849, and continued on very intimate terms with him; that he went by Mr. Hawes' invitation to visit him at the corner of Stockton and Lombard streets; that he worked with him incessantly; that he continued on intimate terms with him up to his death; now, is it proper, out of the mouth of this very same witness, to show visits to Mr. Hawes' house were offensive and disagreeable to Mr. Hawes, when he went there by his invitation?

MR. PRATT—No, sir; to show what Mrs. Hawes' conduct was in the premises. It is not to prove the ultimate fact that the witness was really disagreeable to Mr. Hawes, but to show her conduct in that connection.

THE COURT—[After further discussion.] We are to consider it is the understanding that a fact which might have been proved by Mrs. Hawes when she was on the stand—what Mrs. Hawes might have said—is not competent testimony to go to the jury at all if she is not—what she says is not before the jury at all. Whatever she might have said upon that occasion could have been proved by her when she was on the stand; but if that was not done—Mrs. Hawes especially was a competent witness to prove whether she had told Mr. Bartlett that she had told Mr. Hawes things that made him jealous of Mr. Bartlett. Her declarations cannot be brought out now, in this case, because her declarations are not evidence. While she was a competent witness to prove that fact on the stand, yet her declarations on the stand proved by Mr. Bartlett are not evidence at all; and for that reason I exclude the testimony.

MR. PRATT—Will the Reporter note an exception to the ruling of the Court?



Q. Do you recollect, Mr. Bartlett, when Mr. Hawes was in the State Senate?

A. Yes, sir.

Q. Did you have or transact any business, or have the superintendence of his place, during the time; if so, what was it, and when did it terminate?

MR. BARNES—I object to the question as irrelevant, and as not evidence in rebuttal at all.

MR. PRATT—Q. Did you transact any business, or have the superintendence, or have any charge of Mr. Hawes' place while he was in the Senate?

MR. BARNES—I have objected to that.

THE COURT—The objection is overruled.

THE WITNESS—The only superintendence I had was when he went to the Senate, about the time he was going to be meeting quite frequently, and he said to me he was going to have a grant of money on public business, to the detriment of his private business, that I ought to do something for him—make some sacrifice, or something like that. Whilst he was gone he asked me if I would look after some matters for him. I told him anything I could do, and I took too much time I would do with great pleasure. Then he said or any thought of compensation about it. He was up his place on Folsom street, and asked me—laying gravel, putting down trees, etc. He asked me to go there every day and see how they were getting along. I did, and wrote him occasionally, I think; and when he came down I told him. And he asked me to select some shrubbery to go on the grounds. I went and looked about to see where I could find them, and he wanted. And when he came back he went around with me and showed him what I had selected; but there was so much difference in the price that I got tired of it and quit.

Q. What was the cause of your quitting the employment?

A. My recollection is that he would—well, he desired that I should do something that was bought for the place so very cheaply that I went to go to those people and talk to them about it, and he was particular in the selection of every tree and shrub that went on to the place, and the size and kind, and wanted, after all, to have the selection of everything, and the erection of everything, that I might as well attend to it in the first place entirely himself.

Q. At what time was that—what year?

A. I think that was in 1864; when he was in the Senate in 1863, and it was the December of 1863 and January of 1864, part of it, or it may have been December, 1863—about that time.

Q. Did Mr. Hawes ever express to you his views on the subject of leaving large amounts—fortunes to his children?

MR. BARNES—I object to his asking that question.

THE COURT—I overrule the objection.

THE WITNESS—We have conversed a great many times, and I have been upon that subject.

A. That his idea was that it did not do children any good to leave them large fortunes; very few great men ever had anything to start with.

Q. Anything further on the subject? Did he assign any other reason for not leaving large amounts of money to children?

A. I do not remember that he did. General conversation—not particular—it was not then in reference to his own children particularly, but generally.

MR. PRATT—I suppose it is competent to refresh—Q. Did he say anything about it being a general rule that they squandered their fortunes and made a bad use of it?

MR. BARNES—If your honor please, I do not think that is a proper way to examine the witness. State what he said on the subject; that is, generally speaking, and then put it along side of what he told Gov. Haight.

THE COURT—The question is answered now. I think that the rule is about this: that general questions are to be asked first, and then latitude is allowed for the counsel to call the attention of the witness to the fact after he has exhausted the usual way of drawing out that fact.

MR. PRATT—Yes, when he has exhausted his entire recollection.

THE COURT—The attention of the Court was called to the form of that question before it was put on that account.

MR. PRATT—Q. Did Mr. Hawes ever speak to you of his intention to found or endow any public institution?

MR. BARNES—I object on the ground that if it was evidence in this case it should have been evidence-in-chief. It is like all these other declarations.

THE COURT—[after discussion.] That question, I think, was asked Mr. Howard and Gov. Haight, and whether the objection was raised then or not I do not recollect. I ruled on the question when it was asked Mr. Howard. I am somewhat in doubt as to whether it ought not to be put in chief; but I will give you the benefit of the doubt.

MR. PRATT—I suggest, your honor, that the counsel on the other side have occupied so broad a field, extending over so many years, that they have gone into it with such detail and minutiae, it would be almost impossible to ask a question which would not be in rebuttal, or have a tendency to counteract some evidence which they have sought to establish.

MR. BARNES—If the counsel will point to a single fact of evidence, or anything that I have offered here, that these conversations tend to explain, or modify, or cut down, or rebut, I have not a word to say; I do not know why we cannot have that well understood instead of making it necessary for me to be jumping up and down here all the time and making explanations; the counsel knows as well as I do what is competent and proper, and I think he ought to be governed by it.

THE COURT—I will allow that question to be asked.

MR. PRATT—Q. Did he ever speak to you of his intention to found or endow any public institution?

A. Yes, sir.

Q. When was the first conversation on this subject which you distinctly recollect?

A. I do not recollect. The first I distinctly recollect was when the Lick House was first opened. I think it must have been as early as 1862, or, perhaps, 1863; the beginning of 1863. I recollect we

walked through the halls of that hotel, looking at it, and about some public institution which he intended to endow.

Q. Had he spoken to you on the subject prior to that not?

A. My impression is that he had; but then I have no recollection of any conversation.

Q. How did this conversation arise at the Lick House, was it?

A. I do not know how it arose. Well, he said that he intended to donate his Redwood Farm to the endowment of some public institution of learning or of charity.

Q. How often did he talk to you on that subject, from until his departure for Europe?

A. Quite frequently, when I met him. We did not meet times very frequently, but whenever I met him—very often met him, we talked it over.

Q. State whether or not he always expressed the same views, or seemed to abandon the project. What did he say in those frequent conversations on this subject?

A. It would be impossible for me to tell what he did say.

MR. PRATT—I now propose to ask the witness whether he expressed the same general views, or whether he ever seemed to abandon the project?

WITNESS—He never seemed to abandon the project, but when we talked about it, expressed the same general views of endowing this institution.

Q. When did he first speak to you of the Chamber of Industry?

A. I think he first spoke to me of the Chamber of Industry.

MR. BARNES—I want to object to this, and ask the counsel to state the object of the testimony.

MR. PRATT—The Court has ruled upon it perhaps two times. If I have got, as I ask each question, to state the object and purpose of each particular question, it will be sufficient before we shall get through with this case. I supposed it was sufficient to say generally, or to state to the jury the history of the whole transaction, but not to explain the whole testimony on this side.

THE COURT—[After discussion.] I will allow the question asked.

MR. PRATT—Q. When did Mr. Hawes first speak to you of the subject of founding the Chamber of Industry?

A. Well, when he first commenced talking to me about endowments, of course his plan was not perfected. In 1869, he suggested something, without calling it Chamber of Industry, which ideas, I understood to be embodied in the Chamber of Industry in the spring of 1869.

Q. Before or after his departure for Europe?

A. Before his departure for Europe. But he did not tell me he had actually endowed the Chamber of Industry until later; it was actually done by that name. Before he said he was to endow two institutions; instead of one, as he had originally planned.

Q. Now, when and where did you first see Mr. Hawes after his return from Europe?

A. I saw him at Redwood Farm.

Q. How did you happen to go there? What took you there?

A. I did not know that Mr. Hawes had returned from Europe, when I received a telegram from him, asking me to go out there.

Q. What hour did you arrive there that day?

A. I do not recollect; it was in the afternoon.

Q. Can you fix the date of that first visit?

A. I cannot. It was a few days after Mr. Hawes returned from Europe, perhaps three or four days after he returned.

Q. About what hour did you arrive there?

A. I should think it was—I think I left here at three o'clock; I do not remember distinctly.

Q. Did you take dinner there?

A. Yes, sir.

Q. Now, what conversation, if any, took place on that day, between you and Mrs. Hawes?

MR. BARNES—I object. I do not know how Mrs. Hawes' declarations to this witness, can be of any weight in this case.

MR. PRATT—Mrs. Hawes is a party against us directly.

MR. BARNES—If the counsel wanted to prove what was said, he had an opportunity to do it by her.

MR. PRATT—I have the choice to prove it by another witness, I suppose—

MR. BARNES—The same question has already been passed on by the Court.

MR. PRATT—Not at all, sir.

MR. BARNES—Precisely.

THE COURT—I am inclined to think that Mrs. Hawes' declarations are not evidence in this case, Judge Pratt.

MR. PRATT—If your Honor please, there is no other way in the world by which we can show Mrs. Hawes' conduct and treatment of her husband, excepting to show what she said and did.

THE COURT—You can show how she treated her husband, but what she said to Mr. Bartlett, is no evidence of how she treated her husband.

MR. PRATT—Suppose, if your Honor please, that we hadn't called Mrs. Hawes at all, and that she has not testified in this case, that she is an absent party.

MR. BARNES—Well, then you would be in a different position.

MR. PRATT—Wherein different? We have a variety of witnesses. By some of them we propose to prove one fact, and by some of them, another.

THE COURT—I suppose, now, you put in the declarations of Mrs. Hawes upon the ground that she is a party to the suit, do you?

MR. PRATT—I put them in for the purpose of showing and proving her admissions in regard to a great many facts and circumstances and conversations which took place with her, what she said, and conversations immediately following with Mr. Hawes and other parties.

THE COURT—You can prove how she treated her husband, but her declarations, I think, however, are not proper evidence in this case.

MR. PRATT—Not as to how she treated her husband; not her declarations as to that fact. Of course, in regard to the treatment itself, the acts would be the best evidence, and we would be obliged to show what they were, so far as they were concerned.

THE COURT—[After further discussion.] I doubt very much whether you can establish these facts by the declarations of Mrs. Hawes. This

doubt that I have had has not been removed by anything that you have suggested. I do not wish to cut off your argument; but, if I have another view to present, I will hear it.

MR. PRATT—I have not the authorities here, but if the Court will, I will show that impression, before any ruling is made which will exclude the evidence showing the declarations and statements of Mrs. Hawes in regard to this transaction, I should certainly desire to call your Honor's attention to the authorities upon the admissibility of the declarations of the parties.

THE COURT—The point that I have in my mind about these declarations is this: Though she may be the only contestant here, yet she is not the only party in interest; and any declaration which she makes should not interfere with the rights of the minors in the case. I cannot consent to any illegal evidence being put in; the other point is, that you cannot establish anything to the prejudice of a married woman by her declarations made while she was married; but, under the common law, she is presumed to be under the influence of her husband; and there is only one way in which her declarations can be binding against her in any event; and that is those peculiarly pointed out by the statute. Now, hold that you can show the relation between Mr. and Mrs. Hawes by competent testimony, showing that they acted towards each other, but that you cannot show the effect of these declarations for that reason, because that would prejudice the infant heirs in this case; secondly, that she was a married woman at the time of making them. It is under the general proposition that declarations of an absent party may be given in evidence by estoppel, *en pais*, but the direct proposition was that it might interfere with the rights of the infant heirs; it might destroy their inheritance; it might destroy their right, because, if they took under the will, it took as purchasers; if against the will, by descent.

MR. PRATT—Your Honor, that is the question as to the effect of the will.

THE COURT—Exactly. And now you would seek to establish the relations existing between Mr. and Mrs. Hawes by the declarations existing between them.

MR. PRATT—Yes, sir.

THE COURT—I hold them to be incompetent. You can show persons who have seen their relations between one another, but not the declarations or conversations of Mrs. Hawes—you cannot establish that in my opinion.

MR. PRATT—I suppose, if the Court please, if it could be shown that she had habitually and frequently, in his presence and to his face, when he was sick and nervous, denounced him as a liar—

THE COURT—[Interrupting.] Yes; you can show that.

MR. PRATT—That is what I propose now.

THE COURT—You ask for conversation between Mr. Bartlett and Mrs. Hawes. If you couple with it the fact that he was present, you can ask the question. Then they become probable, veritable admissions.

MR. PRATT—Exactly. But here is the conversation between Mr. Bartlett and Mrs. Hawes at which Mr. Bartlett was not present. Mrs. Hawes relates to him what that conversation was.

THE COURT—That is exactly what you can't prove. If they were all three together you can prove what is said.

MR. PRATT—It has been the basis that the admissions or declarations of the party are not admissible in the testimony.

THE COURT—Yes, sir; in this case.

MR. PRATT—Well, your Honor, allow me to state the authorities hereafter, and to go on with this witness now, and to settle this question hereafter.

THE COURT—I will give my judgment now, and after considering authorities I will give you the benefit of it.

MR. BARNES—He has already put the question and got from him her answer.

MR. PRATT—Did you on that day or evening have any conversation with Mr. Hawes?

A. I did.

Q. What was that conversation?

A. Well, he—I think in the first place he stated to me why he had sent for me, to inform me that he had, previous to returning, made preliminary arrangements with Professor Evans for the education of his son, and that he desired to place a sum of money in my hands to meet the expenses which would necessarily be incurred; and then went on to—mentioned other matters.

Q. Did he say anything then about his endowing this institution?

A. Yes, sir; he mentioned it.

Q. What did he say on that subject?

A. That he endowed the institution by deed, and I think would give possession before he died. He did not intend to wait until he died to give possession of the property. He referred to that. It was a matter with which I was entirely familiar; and he told me in connection, that he intended to do it by deed and to do it soon.

Q. Did he say anything about what provision he had made or intended to make for his family?

A. Yes.

MR. BARNES—I object. The provision he made is shown already what it is.

MR. PRATT—I did not ask him what that provision was.

THE COURT—I overrule the objection.

Q. What did he say on that subject?

A. He told me that he intended to provide for his daughter—for his wife and daughter—by annuities, and intended to subject the property which he proposed to grant to this institution to the payment of those annuities.

Q. Did he tell you what conversation had taken place between himself and Mrs. Hawes upon that subject?

MR. BARNES—Just answer the question.

MR. PRATT—Did he tell you what conversation had taken place between himself and Mrs. Hawes on that subject?

A. He reported to me no conversations, but then I understand—

MR. BARNES—[Interrupting.] I object. No matter. Don't try to answer the question. I want an opportunity to object to putting that

MR. PRATT—Did he state to you whether or not he had consulted Mrs. Hawes on that subject?

A. He said to me that he had.

Q. Did he state whether or not she expressed herself satisfied or pleased with the provision made for her?

MR. BARNES—Wait a moment. I object now to that question.

THE COURT—[After an argument.] Declarations that are made by Mr. Hawes in his transactions are admissible testimony against every-



body; what everybody claims under him. [After further argument I admit the question.]

[Here the Reporter read the question to the witness]: "Did he state whether or not she had expressed herself satisfied or pleased with the provision made for her?"

A. He stated that she was satisfied—that she acquiesced in it. It was still broader than that—that she acquiesced in the disposition which he proposed to make of his property, or what he proposed to do; that is, the arrangement for the education of his child and the disposition of his property and their annuity, and the annuity for her. Mr. B. told me that.

Q. Did he state any reason she had assigned for preferring an annuity?

A. I don't know that he stated any reason she had assigned for it, but he stated to me the reason why he preferred it.

Q. What was that reason?

A. He stated that she did not know anything about the management of property, or had no proper conception of the value or conservation of money, and he preferred it in the way of an annuity to preserve her property.

Q. What did Mr. Hawes say to you about the trusteeship of the son—in connection with his son—about that trusteeship?

A. He said that he wanted me to take this money and invest it and keep it safely, and pay the expenses of the education of his son and one of his nephews, and one of her nephews. His three boys were to go on and be educated together. He explained to me about the arrangements with Professor Evans, and wanted me to see that carried out to the letter.

Q. Did he assign any reason for desiring you to accept the trusteeship?

A. Yes; he stated distinctly that he had selected me because I was a friend of his of long standing, and also a friend of the family of long standing—that the boy was attached to me; that he spoke of me highly whilst he was in Europe.

Q. Did he state to you what reasons or any reason why he desired the son to go to Europe?

A. He spoke of his having—he said it gave him a splendid opportunity for an education, and then he wanted him educated, he wanted him away from the influence of his mother—from under the influence and control of his mother; that the boy had acquired the habit of procrastinating and did not seem to be truthful—to hold truth in proper regard as he thought he should.

Q. Did he state any other respect wherein he thought she was incompetent, or not qualified to educate the son or have charge of him? Did he say anything about her being too indulgent or too easy?

A. No; I don't think anything of that sort was said; merely that he was fearful of her influence on him in those particulars—that she should not enforce.

Q. Was there anything said about her seeing her son?

A. Yes; I asked him if he proposed to prevent her seeing the son. He said: "Not at all; but the only thing I want is that the boy should not be under her control." He wanted him to remain with Professor Evans, and educate him. He had no objection to her seeing him, but he must not come under her control.

Q. Did he inform you at whose suggestion you was selected as trustee?

A. He said he wanted to be buried there in a substantial vault—granite vault—so that in future times, when this University which he proposed to endow was established, they would know where to find his body. His idea was that it would be placed in a vestibule of the University when it was in operation.

MR. BARNES—His body?

A. His body; yes, sir.

Q. Should be put where?

A. In the walls of the University which he would establish on that hill. That was his idea.

MR. PRATT—What did you say to him on that subject. How did he receive it? What was the conversation?

A. He then, after speaking about desiring to be buried there, intending to be buried there, he said something about making arrangements for having a vault there; I desired to change the conversation. He said there was no necessity for that. He said: "I can talk on this, why not as well as any other conversation. I know that I—that I have got to die, and I know probably I shall die within a few months or years at farthest, and I can speak of this as well as any other matter or fact." Well, I told him I thought there was no necessity for commencing to build a vault; that the usual way in San Francisco was to deposit the bodies in the public vault in the cemetery, and they remained there as long as there was any necessity, and then they could be taken out by paying so much money. He did not seem to be satisfied with that idea, and there the conversation dropped.

Q. Was anything said about posterity on his future fame at that time?

A. I don't recollect particularly, at that time; but in our conversation he had the idea that the institution which he was to endow and establish, would hand down his—would cause his name to be remembered as a public benefactor.

Q. What was his manner and appearance during these conversations on these subjects?

A. It was perfectly calm. He talked about everything as connectedly as the best of us could have done.

Q. Now, how long did you remain there on that visit?

A. I think I remained Saturday and Sunday, and came up on Monday morning; went down Saturday afternoon and came back Monday morning.

Q. Did you have frequent and repeated conversations with him during this visit?

A. Well, we were together most of the time talking.

Q. When did your next interview with Mr. Hawes take place after you returned?

A. I think after I came down this time he gave me a copy of the deed of endowment of the Mont Eagle University, which he requested me to have put in type and proof-sheets printed; and to superintend the printing of it; that he would be down the following Wednesday or Thursday to examine it. I will state in my first conversation with him, he seemed to go back to the idea that he would not live but a short time, and he had made all his necessary arrangements preparatory to his death; and among others, he spoke of the arrangements he intended to make, and asked me to assist him in drawing up the papers. At this time he gave me the deed of endowment and asked me to have it

printed, and he said: "I will be down on such a day and then we get a number of witnesses," and it should be executed as he intended it.

Q. Did he come down?

A. Yes, I got it in shape and he came down. He went over carefully again, and he made such changes as he desired, and ordered it to me again to have it printed; and to examine the proofs.

Q. How many days were you occupied in preparing and perfecting that deed of endowment after he came here?

A. I think I came down on the eighth, and the deed was executed on the seventeenth. I think all that intermediate space. That recollection, though I could not swear positively—more or less.

Q. Were you with him every day during that time?

A. Pretty much every day; at least after he came down. He came down, I suppose—I brought it down on the eighth. He came down, perhaps, on the following Thursday, and from that day to the seventeenth, almost every day I was in daily communication with him.

Q. Did you have much conversation with him during these days?

A. A great deal.

Q. On any other subject than this deed of endowment?

A. I don't remember distinctly, but I presume I had. The principal thing when I went to see him was in relation to this deed of endowment.

Q. What was his manner and appearance?

A. I don't recollect distinctly, except the things we were talking about.

Q. What were his manner and appearance during these discussions?

A. It was perfectly calm when we were talking of this business and as rational as anybody could be.

MR. BARNES—I want to say one thing here. I have got weary of making objections and taking up the time of the Court defending them. I am at a loss to know upon what principle of law or question of evidence, with any regard to the decision that was made this yesterday. If this course of examination and testimony is all to go in, I want to object to it once more. It seems to me as though we waste time in the discussion of it. The witness here comes to the stand and gives his opinion of Mr. Hawes appearing rational all that.

THE COURT—I think that is an improper answer.

MR. BARNES—I dislike to be taking up the time making such objections here. I had formed an idea of what was the effect of the decision of the Court yesterday, but discover that I am mistaken. I have abandoned the idea of holding the counsel to the rule at all laid down in that case, but I do think that this is beyond all bounds.

THE COURT—Do you mean to strike out that answer, Mr. Barnes?

MR. BARNES—Yes, sir; I do. That is what I got up for.

THE COURT—Well, that will be stricken out. [The Reporter reads the answer.]

MR. PRATT—I did not ask his manner as to insanity, but as to his manner in relation to these subjects.

THE COURT—We will strike out that part of the answer. Let that be stricken out.

[The Court here took a recess until two o'clock, afternoon.]

## AFTERNOON.

WASHINGTON BARTLETT, recalled by the Executor for further *Examination* by MR. PRATT—Q. I will ask you if Mrs. Hawes was present during the conversation between you and Mr. Hawes, at Redwood, in regard to the annuity or the deed of foundation?

A. It was referred to that evening after I told Mr. Hawes I would accept the position as trustee, in the parlor and at dinner.

Q. Was Mrs. Hawes present?

A. Mrs. Hawes was present. I think she referred to it once.

Q. Did you observe any change in the manner or appearance of Mr. Hawes, when she came in or when she was referring to any connection with the business.

A. I did not.

Q. When you left the stand before talking about the preparation of the first deed of foundation, and the time spent, etc., you had said you were there every day for several days; did you have general conversation with Mr. Hawes on those subjects during those interviews?

A. Yes, and transacted several other businesses with him, business connected with the trust, and if there was anything else to be done he wanted me to do, I did it for him.

Q. Were any allusions made in those interviews, to his wife and family?

A. I don't recollect distinctly that there were. I recollect Mr. Hawes making a remark to me, relative to his wife; but whether it was made then or before, in the first conversation, I cannot fix it. We had some talk about the provision he was to make for his wife.

Q. When was that first deed of foundation executed?

A. I think the first deed of foundation was executed on the 17th of August, 1870.

Q. Did you receive any note or communication from Mr. Hawes, on that day?

A. I did. I have a note from him on that date, dated on that day, the 17th, and from other circumstances which I recollect, that was the day on which the deed was executed. [Here the witness hands the paper to Mr. Pratt.]

MR. PRATT—Q. Is that it?

A. That is it.

MR. PRATT—[Reads] "1300 Folsom street, August 17th. Dear Sir:—Please have three copies printed on parchment with the blanks, just as they are, and have a comma put in the fourth paragraph of the condition, second line, next after the word 'parks,' so that the words 'and other common grounds, if need be,' will stand between the commas. Appoint your time, and come out this afternoon or evening, with the subscribing witnesses, five, to execute the paper, etc." [Mr. Pratt reads the letter.]

Q. About what time on that day, was that deed executed?

A. I think the appointment was four o'clock, but it was a little after that before the witnesses got there, and the deed was actually executed.

Q. Where was Mrs. Hawes then living?

A. She was living at Redwood City, or went there on Monday.

Q. Did you receive any telegram from her on that day?

A. I did.

Q. Where is it?

A. I don't know where it is. I have not been able to find it; I did not preserve it.

Q. What was its purport?

MR. BARNES—I object.

THE COURT—What is the object of the testimony, Mr. Pratt?

MR. PRATT—To show in the first place, that Mrs. Hawes, although living at Redwood, by some means knew exactly what was transpiring all of the time.

THE COURT—Is that the same telegram sent by her to Mr. Bartlett to come up; is that connected with that same transaction?

MR. PRATT—It is connected with the same transaction and the meeting at the Lick House. This is for two purposes; first, of throwing further light upon the meeting at the Lick House; and second, to show that she had perfect knowledge of everything that was transpiring, and thereby supporting the opinion that Mr. Hawes thought she had spies to watch him, which annoyed and irritated him very much.

THE COURT—What is the ground of the objection?

MR. BARNES—That it is irrelevant, immaterial, and not the best evidence.

THE COURT—He says he has lost the telegram.

MR. BARNES—No; he said he don't know where it is.

THE WITNESS—I did not preserve it.

THE COURT—Can you get hold of it?

THE WITNESS—I have no idea; I did not think anything of it at the time.

MR. BARNES—The telegraph office keeps copies of all despatches.

THE COURT—That would be the best evidence.

MR. PRATT—I will ask this question then: Who first suggested the meeting between Mrs. Hawes and yourself at the Lick House?

A. Mrs. Hawes.

Q. How?

A. By telegram directed to me.

MR. BARNES—I move to strike that out.

MR. PRATT—Had you prior to that time—

THE COURT—[Interrupting.] Wait a moment. I suppose the best evidence of that telegram would be the telegram itself.

MR. PRATT—The best evidence of the manner of the meeting?

THE COURT—What it contained.

MR. PRATT—I did not ask the contents of the telegram.

THE COURT—It is necessarily involved in the question propounded. An arrangement is made for a meeting, by telegram, and the contents of the telegram must contain something about it.

MR. PRATT—I merely desire to show that she telegraphed him in relation to this subject generally; that is all.

Q. Did you meet her at the Lick House as requested?

A. I did.

Q. And what day was that, or night?

A. It was the evening of the seventeenth of August.

Q. What was the subject of the conversation between yourself and Mrs. Hawes at the Lick House?

MR. BARNES—I object. Counsel has already examined Mrs. Hawes on that whole subject, and got his answer from her; and even if he had not, it would be immaterial and irrelevant.

MR. PRATT—I suppose I can prove it by another witness or call another witness to the same point, if I have examined one.

A. I don't think he did.

Q. Did any one?

A. Yes, sir.

Q. Who?

MR. BARNES—I object, now. That is hearsay, certainly.

THE COURT—This comes under the objection I have sustained as hearsay testimony.

MR. PRATT—Did he tell you now you came to be selected as trustee?

MR. BARNES—He has already stated.

MR. PRATT—He has not answered the question, I don't think.

MR. BALDWIN—He said he did not tell him.

THE WITNESS—No, I did not. I said he said he had selected me because I was an old friend of the family, and the boy had spoken of me while he was absent in Europe.

MR. PRATT—Did he give any reason for selecting you? Did he say anything about its being agreeable or otherwise to Mrs. Hawes?

A. He stated—he gave me to understand—

MR. BARNES—[Interrupting]—Hold on. State what he said.

THE WITNESS—I have no recollection of the exact words used, but certainly the impression on my mind was—

MR. BARNES—[Interrupting]—Never mind; I don't want the impression on your mind.

MR. PRATT—If the Court please, if he don't recollect the precise language, we have the right to know what impression the language left on his mind.

MR. BARNES—Let him give the language or the substance of it.

THE WITNESS—The substance of it was that Mrs. Hawes acquiesced in that.

MR. PRATT—What were the relations between Mr. and Mrs. Hawes at that time?

A. They seemed to be friendly, entirely so, at the time.

Q. To what extent? How as compared with their ordinary relations?

A. Well, I think they appeared to me on better terms than I had seen them before.

Q. Did he inform you why he had selected Professor Evans to take charge of his son?

A. Yes, sir; that Professor Evans was a man of great learning—had been recommended to him by the president of the same college—I forget which—a man of high social position—a man who had been connected with the college as a Professor, whom he had generally considered as one of the first men of the country.

Q. What response did you make to his proposal, to make you a trustee?

A. I told him that I should not, under any circumstances, think of accepting the position, if there was going to be any controversy about it. I saw from what he told me, that it contemplated sending the child out of the country for about five years, and to put it under the control of other parties. I said if there is going to be any controversy about this, Mr. Hawes, I shall not accept it. I have no children of my own, and I should think I would be very foolish to get myself into hot water by the children of other persons. He said there would be no controversy about it, and went on to tell me—



Q. [Interrupting.] Well, what reason did he assign, or why did he say there would not be any controversy?

A. That Mrs. Hawes had acquiesced in this with the offer—what he proposed to do—stated he had made up his mind as to what he intended to do, what disposition to make of his property, and what arrangement he intended to make prior to his death, and that Mrs. Hawes had acquiesced in them, and that there would be no controversy at all; and he assured me of this positively.

Q. Did you say anything to him about having an interview with Mrs. Hawes yourself on this subject, before you would accept the trust?

A. He told me I must see Mrs. Hawes about it.

Q. Did you talk with Mrs. Hawes about it?

A. I did.

MR. BARNES—Wait a moment. I move to strike that out. They dodge the answer into the question so quick, that it would take an electric machine to get between them.

MR. PRATT—The witness merely says she talked with him on that subject of the trusteeship. Now I propose to ask what Mrs. Hawes said on that subject.

THE COURT—I suppose you object.

MR. BARNES—Yes, sir.

THE COURT—I don't see any use in striking out the balance. He said at the conversation with Mrs. Hawes—

MR. BARNES [Interrupting.] Well, I will leave it there.

THE COURT—That is the same question I have ruled on once or twice—the same ruling.

MR. PRATT—If the Court please, this question has no reference to any disposition of property at all, with his will or foundation deed. It is merely to show the circumstances and facts upon which Mr. Hawes was actuated. He had conversed with Mrs. Hawes—

THE COURT—[Interrupting.] That is exactly the same question, that which disposes of the custody of the child, is just as important as the right of property.

MR. PRATT—The reporter will note an exception to the ruling of the Court.

THE COURT—I do not care to cut off discussion on these matters, but we are getting along a little slowly this morning. It is the same question, the same ruling and the same exception.

MR. PRATT—Do I understand the Court we will not be permitted to show now that Mr. Hawes requested Mr. Bartlett to accept that trusteeship?

THE COURT—Yes, sir.

MR. PRATT—That ruling excludes the whole of our conversation—all about it.

THE COURT—Yes, sir.

MR. PRATT—Did you, after talking with Mrs. Hawes, have a further conversation with Mr. Hawes on this subject?

A. I did.

Q. What was that conversation?

A. I told him that I would accept.

Q. Did you state to Mrs. Hawes, in your conversation with her, whether you would accept or not?

MR. BARNES—Hold on; I object.

THE COURT—The objection is sustained.

MR. PRATT—What was the arrangement between you and Mr. Hawes, in regard to that deed of trust, when you came away?

A. He said to me, "I will be up on the first of August to execute it—to make it out."

Q. Did he do so?

A. He came up—I don't think I saw him again until then. He came into my office and executed it, and delivered it to me, with the amount of money and other securities.

Q. What day of the week?

A. The first, I think; Monday.

Q. Have you that deed of trust?

A. I have.

Q. Were any other papers delivered with it?

A. Yes, sir; there was a mortgage, and city bonds; transfer mortgage, and also a letter in the nature of a contract with Professor Evans, of which there were three copies. He left them with me and asked me to present them to Professor Evans, with instructions to sign them and return two copies and keep one.

MR. PRATT—[Handing witness papers.] Are these the papers?

A. [Examining papers.] Here is Mr. Hawes letter creating the trust.

MR. BARNES—I object to that as irrelevant and immaterial, and not evidence in reply—not evidence in rebuttal.

MR. PRATT—If the Court please, I propose to read this deed of trust in evidence. The counsel on the other side admits the signature of Mr. Hawes, his handwriting, but objects on the ground that it is irrelevant and not in response to any testimony of theirs in the case, if it is shown simply that it was made and endorsed properly at that time in his handwriting.

MR. BARNES—In what?

MR. PRATT—In the subject matter.

MR. BATES—That is not his hand-writing.

MR. BARNES—The signature is acknowledged.

MR. PRATT—It is an instrument made by Mr. Hawes, at that time, and the subject matter they have exhausted in a great many hours, and in fact a good many days, of testimony.

MR. BARNES—If that paper tends to disprove anything we have proven I have nothing to say; but it don't.

MR. PRATT—It tends to show the condition of the decedent's mind at that time.

MR. BARNES—That is not evidence in rebuttal; that is testimony-in-chief. If he has got any fact tending to show the deceased's mind, as to whether it was sane or insane, I suppose it is proper for him to put it in in the first case. If he had any evidence at all, oral or written, by these persons, or any other persons, that was the time for him to put it in. Not having done it, now he is limited to evidence in rebuttal, or reply. That is the object of it, to show the general state of the decedent's mind. There was a proper time for it.

MR. PRATT—If the Court please, the effect of this—

THE COURT (interrupting)—I will allow that to go in. I overrule the objection.

MR. PRATT—(Reads the letter marked "Prof. Evans' Exhibit A.")

MR. BARNES (Interrupting)—What date?

MR. PRATT—Only 1870.

MR. BARNES—What date?

MR. PRATT—I have not come to any yet, when I do I will read it. It may be the habit of the counsel on the other side to mis-read either authorities or documents which he reads in testimony, but I have never yet resorted to that practice, and I do not propose to be badgered into it by the counsel on the other side. He may pettifog if he pleases, but I do not intend to do it.

MR. BARNES—Nobody else can say that for you.

MR. PRATT—(Concludes the reading of "Prof. Evans' Exhibit A.")

Q. Did Mr. Hawes ever give you any further instructions in regard to this trust—any written instructions I mean?

A. No, no written instructions. He gave me a letter admitting Horace Martin to the benefits of the trust, to a limited extent.

Q. Have you that letter?

A. I have it. Here it is. [Hands the letter to Mr. Pratt.]

MR. BARNES—This goes in under the same objection, I suppose.

MR. PRATT—[After examining, reads the letter, which is marked Exhibit "B."]

Q. You spoke about a contract, or letter of contract, between Mr. Hawes and Professor Evans there at the same time; have you that?

A. Yes, sir; here it is. This is it. [Hands letter to Mr. Pratt, which is marked Exhibit C.]

MR. BARNES—The same objection.

THE COURT—The same ruling.

MR. PRATT—[Reads Exhibit C.] Q. Were there any other papers given to you by Mr. Hawes in connection with those transactions?

A. There was the mortgage referred to, and the city bonds; transfer of mortgage to me.

Q. When and where were those papers offered to you?

A. At my office in the city of San Francisco.

Q. At what time?

A. On the first day of August, 1870.

Q. When did you next see Mr. Hawes?

A. I think I next saw Mr. Hawes at his farm, at Redwood.

Q. What was the occasion of your going there then?

A. I don't remember now distinctly what was my motive, or whether he telegraphed for me, or I merely went down to see him.

Q. How long after the first of August was this?

A. I think it was about—I went down on Saturday and came back the following Monday; that is my recollection of it.

Q. These papers were delivered, then, on Monday, the first of August?

A. Yes, sir.

Q. The following Saturday you went down there?

A. I think so.

Q. Did you have any interview with Mr. Hawes on this visit?

A. Yes, sir.

Q. What occurred?

A. He went over again more particularly in reference to the disposition which he proposed to make of his property, and how he intended to fix his affairs, etc. Then, on Sunday, we took a carriage and rode out on to a hill there which he showed me, and stated there was where he wished to be buried.

Q. What was the conversation on that subject?

A. Well, he said he wished to be buried there.

Q. Did he assign any reason for it?

THE COURT—Was Mrs. Hawes there?

MR. PRATT—Yes, sir. All of it is a part of the same general transaction—"row," as they call it—as Mrs. Hawes designated it. I propose also to show that Mrs. Hawes then told Mr. Bartlett—

MR. BARNES—Never mind now. I object to you stating evidence. If there was any conversation had with Mrs. Hawes while Mr. Hawes was present, give it. If there was not, I object to its being testified to, or rather your telling it. Suppose the conversation with Mrs. Hawes was while the others were quarreling on the very same matter—on the same subject matter, and two minutes before—thirty seconds before, they were moving and talking, and that she got up and went into the room a part of the time with them and a part of the time was not.

THE COURT—All that conversation in the presence of Mrs. Hawes that he heard or could have heard ordinarily can be given. The other I rule out.

MR. PRATT—What was the conversation, then, which took place in the presence and hearing of Mrs. Hawes?

A. Mrs. Hawes came out and said that she had taken the grain, as I understand it—taken the grain herself. She was held responsible for the deficiency in the amount of grain.

Q. Well, what did she say was going to come of it—or what did come of it—what was the consequence?

A. I don't recollect what she said.

Q. Do you recollect how Mr. Livingstone came to be there?

A. She told him—

MR. BARNES—[Interrupting.] Never mind what she told him.

MR. PRATT—Was anything said at that time about having the parties arrested—having anybody arrested for stealing grain?

MR. BATES—I should like the gentleman to state what they said; to give their conversation so far as he can remember.

MR. PRATT—State what was said then upon the subject of having anybody arrested.

A. I don't recollect myself whether I heard Mr. Hawes say he was going to have anybody arrested. But that was the understanding, that he had made the threat to have Mr. Livingstone arrested if he did not produce the grain. That was what I understood to be the threat which he made.

Q. Did Mr. Hawes ask you at that time to see Mrs. Hawes and endeavor to make some arrangement between her and him?

A. In relation to this discussion about the grain, I cannot fix or swear positively; I rely upon that paper there to fix that time as much as anything else. But I was present when the quarrel went on, as I have stated, but whether it was earlier, or on the 21st or 22d, as I have supposed it was, I am not absolutely certain.

Q. Was it at the same time you delivered that paper?

A. It was the day before I delivered that paper. There had been a quarrel, and I think it was this one; and Mr. Hawes, after he retired, went to his room and sent for me, and I went in there and found him considerably excited and mad, and he made some sweeping assertions of his wife, denounced his wife in a very rude, rough manner, and wanted me, I think he said, to get her out of the house; that she was not fit to be in any decent man's house. I said to Mr. Hawes immediately, as I could put in a word, "Mr. Hawes, I wish you to distinctly understand that I will not be brought into any trouble between you

and your wife. I shall have nothing—I will not take sides with either of you, and will not have anything at all to do with it. If I believed Mrs. Hawes to be”—he had said something—

MR. BARNES—State what he said.

A. Well, I think he made use of a very rough expression, though I don't recollect what it was. I think it was a very rough expression about her chastity.

Q. Give the substance of it?

A. That she was unfaithful.

Q. Give us the substance of what she said, Mr. Pratt, if you can remember it?

A. I can't remember it—that she was not a virtuous woman. I don't recollect the word he used, but that was the idea conveyed to my mind, but my impression is it was a pretty rough thing.

Q. Did he use any oaths?

A. I don't recollect that he was in the habit of swearing.

Q. That is not what I asked you?

A. I don't think he did. I said to him that I would not take part, and that I believed Mrs. Hawes—I had seen a great deal of her—was a virtuous and good woman—and something else—he made some other assertions which I answered, and then I concluded by saying any way—I said further that I considered his passion against Mrs. Hawes on the occasion was entirely unreasonable, and after all that he had said had been done that I thought Mrs. Hawes was really attached to him.

MR. BATES—Now, what response did Mr. Hawes make to that?

A. In a sneering manner, says he: “I thought that you were a better judge of people,” and then he remained quiet for some time, and then commenced in a very calm way and went on to tell me of his grievances.

Q. What were they? What did he say?

A. He said a good many things. I don't recollect them all.

Q. Did he say anything about stealing or lying?

A. Yes; he did. She had stolen his property, and was in league with thieves, and she had told him lies and had taught her children to lie, I believe—rather to deceive him. He did not use the word “lie.”

Q. Did he tell you what property was stolen, and what she had lied about?

A. No; I don't know if he did. I did not understand—

MR. BARNES—[Interrupting.] Never mind what you understand.

MR. PRATT—Did he request you to see Mrs. Hawes and have any conversation with her?

A. Yes, he said also—the last part of his conversation, I understood him to abandon the idea of charging her with want of virtue. He said simply in that connection, that she had shown him love letters, which were written to her by, as he expressed it, “officers and other fast people;” I think he said previous to their marriage. I did not understand him then to charge her with the want of chastity. Then he requested me to make some arrangements with her—even to half the extent of his fortune, to get her away from him, and that he might, as he said, die in peace. I saw he was laboring under a good deal of excitement, and there was no chance to talk with him, or reason with him, and I said to him, “Go to sleep, and get a nap, and I will see what can be done in the morning.”

Q. When you remonstrated with him, and said his objection against her was unfounded, how did he receive that—how treat it?

A. Well, his reply to me, you know, was, or seemed to be in a sneering way, in reference to whatever I had said to him. He said he thought I knew people better, or was a better judge of people.

Q. Did his passion continue, or did he talk calmly?

A. The last part of his conversation, when he commenced to say these things to me, it was done in the firmer calm sort of way and connected manner. But it had been passionate and somewhat disjointed before. Then when I said that to him, he went on as if to convince me that his feeling of passion was not unreasonable. That was the impression made on my mind.

Q. Well, you say then, that you waited until the next morning; state what occurred the next morning.

A. The next morning I went to see Mrs. Hawes, and had a talk with her.

Q. Did you see Mr. Hawes, before you had a talk with her?

A. I don't recollect; I think I did have a—he reminded me of my promise, or at least expected it. Afterward I saw her, and had a talk with her.

MR. PRATT—If the Court please, this conversation between Mr. Bartlett and Mrs. Hawes, was at the request of Mr. Hawes. He was acting as messenger between them, and I apprehend it stands in the same position as if the two had been together, and we are entitled to put it in the testimony—the overtures on the part of one, made and received in a certain way, by the other one.

MR. BARNES—I object to it.

THE COURT—I rule it out. The same ruling as before.

MR. PRATT—The Reporter will note an exception.

Q. Did you see Mrs. Hawes and converse with her on those subjects?

A. I saw her and had a very long conversation with her about it.

Q. Did you after that report to Mr. Hawes what had occurred between you and Mrs. Hawes, and have a conversation with him?

A. I did.

Q. What was this conversation with Mr. Hawes?

MR. BARNES—Now, I object to so much of that conversation as relates to what he told Mr. Hawes. That is objectionable.

THE COURT—That is the same question I ruled out this morning, Mr. Barnes; the same ruling, as to what Mr. Hawes said.

MR. BARNES—I don't object to what Mrs. Hawes said, at all; but the counsel failing to get what he wishes in any other way, now turns around and asks him to state what he told Mr. Hawes, and what Mrs. Hawes said. That is equally incompetent.

MR. PRATT—It is not for the purpose of proving what he said. It is what this conversation was between Mr. Hawes and Mr. Bartlett.

THE COURT—I think that is competent.

MR. PRATT—You may now state what this conversation was between Mr. Hawes and yourself.

A. Well, I stated to Mr. Hawes that Mrs. Hawes would go and live somewhere else; that is the purport of it; of course, I don't pretend to give the language—if he would allow her one hundred and fifty dollars per month.

Q. Well, what was the result?

MR. BATES—State what took place.



A. Well, he got in a passion and said that she should not dictate terms to him—that he had the right to say where his wife should live; that he was her husband, and that she had to live where he said; that if she wanted to live in Redwood, why she should do it, and that he would go to the city; or that he would stay in Redwood and that she should go to the city.

MR. PRATT—Q. Well, did he give her the amount which she wanted?

A. No; he did not say anything about the amount. And then he sat down and wrote this communication—I suppose it is the same—and told me to give her that. I felt a good deal disgusted with the whole matter, and I just came out and handed Mrs. Hawes the paper, and bid her good-bye and left. I went to Redwood City and remained there until the cars came along, and went home.

MR. PRATT—If the Court please, I want to ask the witness this question. I asked Mrs. Hawes the other day, I believe, if when Mr. Hawes asked her about the grain, she ever denied having taken it. Now, I propose to ask Mr. Bartlett whether Mrs. Hawes told him on this occasion in this conversation that when Mr. Hawes discovered it and had questioned her to know where it was, she had told him it was all in the barn. I would like to ask him whether Mrs. Hawes said that to him or not.

MR. BARNES—I object. The witness has already stated his understanding about that, that when Mr. Hawes was talking with Mr. Livingstone about it, and told him he would have him arrested if he did not produce the grain, that Mrs. Hawes, who hearing it, went in and told Mr. Hawes she had taken it herself and sold it.

MR. PRATT—Q. And if she did not say at the same time that she had formerly stated to Mr. Hawes it was all in the barn?

THE COURT—I don't see any other effect to that testimony except to impeach Mrs. Hawes' testimony.

MR. PRATT—It is not for the purpose of attacking her credibility at all.

THE COURT—When you put the witness on the stand, you took the risk of her stating the truth, and having examined her on it, you cannot put her in a position to impeach her testimony. And this would be the effect of this testimony. I will sustain the objection; my mind is clear about it.

MR. PRATT—The Reporter will note an exception to the ruling of the Court on that question.

Q. Now, were Mrs. Hawes' visits to your office, and the meeting at the Lick House ever the subject of conversation between you and Mr. Hawes?

A. They were.

Q. When?

A. I think it was sometime subsequent to this—I can't fix the date exactly.

Q. About when?

A. I think sometime subsequent to these meetings—sometime after this disturbance at Redwood farm.

Q. How many times had Mrs. Hawes been to your office?

MR. BARNES—I object. I understand that what has passed between this witness and Mrs. Hawes, on her visits to him have nothing to do with this case.

MR. PRATT—I didn't ask him what was said between them.

THE COURT—I sustain the objection.

MR. PRATT—How long after that, before Mr. Hawes returned to Redwood?

A. I don't know sir. I think he went out the next morning.

Q. When and where did you next see him?

A. At Redwood Farm, I think—about the 20th of August.

Q. How did you happen to go there on that occasion?

A. I don't recollect very distinctly, but my impression is that I went there to talk to him about the subject that was suggested in a letter or telegram I had received from Professor Evans, relative to his leaving for Europe.

Q. Who was superintendent at that time, of Redwood Farm?

A. Mr. Monroe.

Q. Who procured him that place?

A. I did, at the request of Mr. Hawes.

Q. Was Mr. Monroe there at the time of this conversation you now speak of?

A. He was.

Q. What transpired on that visit?

A. I think Mr. Monroe met me at the depot, and walked up with me to the house. He stated things to me, which I suppose by the ruling of the Court, I am not at liberty to state.

Q. Well, what transpired at the house after you arrived there?

A. I think it was on that visit that there was a dispute going on, or occurred between Mr. Hawes and Mr. Livingston about the management of his affairs during his absence. I was at the farm at the time that dispute occurred, but I am not altogether certain as to the date, but I believe though, it was on the 20th of August, when I went down on this occasion, that this dispute occurred.

Q. State what the difficulty was, and how it arose, and how it terminated?

MR. BARNES—I don't see the relevancy of that.

THE COURT—I don't see the relevancy it has.

MR. PRATT—If Mr. Barnes will permit me now to make one or two general suggestions, perhaps they will not be out of place, and probably enable the Court to see that all this testimony has a direct bearing, and a materiality, and also directly in the line of rebuttal. We spent sometime in arguing general propositions, as to the burden of proof, and the Court has passed upon it—with that we have no fault to find, and make no effort or seek to re-open that question at all—that has been adjudged against us, but the burden of proof is upon us, but where the burden of proof rests, and what is testimony in rebuttal are two entire and distinct questions. We called witnesses in the first instances to prove the condition of Mr. Hawes' mind at the time when the will was executed. Now, conceding and admitting the burden of proof to be on us, as the Court adjudged, the question would then arise, when the burden of proof was discharged. In the first instance, the only testimony we could introduce at that time, was, as to his condition then. At the time, or at least immediately before and immediately after the actual execution of the instrument, we were obliged to stop whether we chose to or not. Now—

THE COURT—[Interrupting.] I don't know that you were. I call your attention to my doubts on that subject, now. One witness testified he had doubts, as Mr. Baldwin stated that he had doubts. But I

think it was afterwards put to him whether those doubts were in his mind at that time; and he testified and said they were.

MR. PRATT—Yes, he said that at sometimes he had a doubt in his mind whether it was eccentricity or partial derangement.

THE COURT—You have called all the witnesses that you wish to examine in chief on the general proposition of insanity?

MR. PRATT—Yes, sir.

THE COURT—You were not bound to stop there, and you did not stop there. You went on, and examined a physician in addition to these subscribing witnesses.

MR. PRATT—But as to his condition at the precise time of execution of the will. It may be suggested that we were not obliged to stop at that time, but were we called upon, or would the Court require us to go back through a series of ten or twelve years and trace this man from his childhood in support of his sanity, and call testimony after testimony, and witness upon witness, to show that through a series of years he had been perfectly sane in the transaction of his business?

THE COURT—The Court might have stopped you, perhaps, when you got tired of hearing the testimony, but then that would have been the Court's action.

MR. PRATT—Yes, sir. Did the burden of proof require us to go to that extent, or not? Might we not rest upon showing his condition at the time of the execution of the will, and then have rested there without going back several years, as Dr. Caldwell and others did go back ten or twelve years? Now, it is within the line, it seems to me, to make a direct rebuttal, under these circumstances, for us to go back and show what his condition was at the time, and to introduce in evidence circumstances which will tend to show that these acts which are charged upon him, charge him with, months or years before, were not habitual; and that is what we propose to do here.

THE COURT—I don't see how we would ever get through with this case. The philosophy of these cases is, as I understand them, is that when you know of a fact or have reasonable grounds to believe in what will be put in issue, if the burden of proof is upon you, it is your duty to exhaust your proof at that time; because very frequently the order in which proof is made has a very great influence in compelling the conclusion one way or the other—the force of it; and I understand that to be the philosophy of the practice, just like the opening and closing conclusion in the argument. An argument really may be the same thing in opening or closing; that is, the facts may be the same, and the will become as—that you have the general testimony upon the opening.

MR. PRATT—By way of illustration, let me put this case, Honorable Court.

THE COURT—[After discussion.] You look at the testimony from one standpoint and Mr. Barnes and his side from the other. I am trying to look at it from the middle standpoint the best I can.

MR. PRATT—I asked the witness what transpired generally—what was done there at that time.

THE COURT—I cannot state whether that answer would be competent or not.

MR. PRATT—It would not with reference to Mr. Monroe.

THE COURT—There was some debate between Monroe and

witness about Mr. Livingston. Here I cannot say how this dispute has any materiality upon the trial at this time.

MR. PRATT—The connection will be this, your Honor. Mrs. Hawes' conversation was involved in that controversy and dispute, and the — and they have undertaken to show that his habitual treatment of her was of a certain kind; whenever she came into his presence or was allowed to, he pursued a certain course in that respect. Now I propose to show that at this time there were circumstances occurred which were quite aggravating to him, and yet he did not pursue any such course as they charge him with; to show that that was not the habitual idea of his mind, or the habitual and usual treatment of her.

THE COURT—I think that would come in the line of rebuttal of his testimony.

MR. BARNES—I don't desire to take up the time of the Court unnecessarily in making suggestions in the case, but I think it but due and right to say that the case as made by us shows—and that is the scope of the testimony, if I understand it at all, that Mr. Hawes' mind had become diseased on several subjects; first with respect to his wife, that he was in a fixed and morbid delusion with reference to her. That is the scope and extent of much of the testimony that we have given. If any testimony can be offered here to rebut that testimony, it is of course admissible. We also claim that Mr. Hawes, in connection with this morbid delusion with respect to his posthumous fame. If there is any testimony given to rebut this claim, it is competent testimony, but I presume that much of the testimony that has been allowed to be produced here by Mr. Bartlett can have no effect at all to demonstrate the general capacity of Mr. Hawes to transact business. How far this paper is given with respect to his style may be argued; but it is introduced for the purpose, for the general purpose to show, so far as I can see, to establish that Mr. Hawes had a general business capacity, which is not the case made by us, and about which there is no dispute at all. We don't pretend to say that Mr. Hawes, though eccentric, was not still able to transact business so far as he did transact it, at all. We don't undertake to say that Mr. Hawes was in a state of dementure; that he was at the moment absolutely incapable of exercising reason on any subject, or topic. That was not in the scope of our testimony; and if that testimony is to be introduced here, I respectfully submit that it is utterly incompetent at the present time. Their cause must be directed to representing their specific facts and to show no other, and the different state of facts with respect to those very things.

MR. PRATT—[After further argument.] The testimony I offer now is directly responsive to that.

THE COURT—They propose to ask what transpired to which Mr. Hawes was a party, and the gentleman and Mr. Bartlett was a party at Redwood City.

MR. BARNES—I don't understand it to say so at all. Mr. Bartlett says the gentleman, Mr. Monroe, met him at the depot and walked up with him to the house. Now, he says what transpired at the house. I say that is not competent evidence, because it don't appear at all at this state of the evidence, because it is not stated at all what part Mrs. Hawes had in it, whether she was present, nor whether it related to her or Mr. Hawes, or their domestic relations or his idiosyncrasies. I don't think it is proper to allow the counsel to get answers of this kind before the jury, for in many cases, unless they be very particular, they get impressions upon the mind, and although the Court may strike out

the particular answer. you can't strike it out from the minds of the jury. Let the counsel ask witness who were there, if he finds who was present—

THE COURT—[Interrupting.] I understand that question was asked.

MR. BARNES—No, sir.

THE COURT—Then ask it.

MR. PRATT—What transpired at the meeting in which Mr. Bates and Mrs. Hawes—in which they participated; who were there?

A. Well, there was a gentleman; I did not know it at the time. I understand it was Mr. Livingstone. There was Mr. Hawes and Mr. Bates and Mrs. Hawes; I was in the room adjoining. Mrs. Bates left me and joined them, and they were sitting on the porch in front of the house—the piazza in front of the house.

Q. Was there any difficulty or controversy at that time?

A. From what I could hear?

Q. Yes?

A. There appeared to be a dispute going on.

MR. BATES—I would like witness to state where he was.

THE COURT—I understand you were present?

A. I was, one portion of the time when it occurred. One portion of the time when it occurred I was in the dining-room, but they talked so loud and I could hear a portion of it, and then I got up and went out. I was not interested in the conversation at all, but I was standing there a looker-on of what transpired.

MR. PRATT—If the Court please, I will make a suggestion. The day I put in a written document, Mr. Hawes' memorandum, dated the twenty-fourth of August, and I want to show by this witness that there was a trouble on the twentieth and twenty-first between him and Mrs. Hawes, which resulted in this memorandum which they have given in their testimony. I want to show by way of connecting and explaining that what it was, what it was.

MR. BARNES—Mr. Bates informs me that this interview to which witness is alluding took place on the seventh of August.

MR. PRATT—Mr. Bates is mistaken.

THE COURT—Mr. Bates can go on the stand.

MR. PRATT—Now, how did that difficulty arise? How was it, and how did it terminate? Just state the answer in your own way.

A. Well, that was as I understood—

MR. BARNES—[Interrupting]—Never mind what you understood. Just state what you saw or heard.

A. Mr. Hawes had discovered that there was some grain missing out of his warehouse—deficient out of his barn, and he, in the meantime, held Mr. Livingstone responsible for it; and Mrs. Hawes was there and said she had taken the grain and sold it. That is about the way I understood it at that time. Of course I was not at all interested.

MR. BATES—I wish you would state what you heard there, as you understood.

A. I could not state the conversation.

MR. PRATT—Can't you state the conversation you had with Mr. Hawes at that time on that subject?

THE COURT—If that was a part of some conversation with Mr. Hawes present, and Mrs. Hawes heard that conversation, it would have a connection with the relations of the parties. But if it was a conversation apart with Mrs. Hawes I could not admit it.

MR. PRATT—They were not together all the time?



MR. BARNES—Certainly; if you can prove what was said, there is no materiality in proving how many times she was there.

THE COURT—Do you propose to prove a different state of facts from what Mrs. Hawes stated?

MR. PRATT—I don't know, your Honor, whether he will say more or less, I have no idea. But if Mrs. Hawes happened to make a mistake, and we call another witness, I suppose that does not preclude us from calling upon him for the same point. I don't attack her credibility at all; it is always competent to show by a witness in the case, that another witness is mistaken; otherwise, every witness that a party could call must necessarily testify to the same state of facts. The recollection of witnesses does not always agree, and it would be a strange thing, if, after years, a witness should say he did not recollect a particular transaction at all, that I could not call another witness, unless he would say the same thing.

MR. BARNES—What he considers the best side of the case, and right upon the instant makes him his own, presents him to the jury, examines him as to a particular fact or set of facts, and the witness testifies, that he can afterward put another witness on the stand to contradict that witness.

MR. PRATT—I called the witness for the very purpose of supporting the statement of another witness. Whether he will give precisely the same number of visits or not I don't know; I take the chances.

THE COURT—Well, you can ask the question; I will overrule the objection.

MR. PRATT—How many times had she been at your office before you had these conversations with Mr. Hawes about it?

A. I don't recollect the number of times, but in this conversation he referred to other times besides the Lick House.

Q. To others?

A. Yes, sir.

Q. What was the conversation between you and Mr. Hawes? How did it arise?

A. I called on him on that occasion one evening when he was here, and as soon as I went into the room I saw that he had something on his mind. I waited to hear what it was, and he remarked to me about—not in these words, but as near as I can recollect, that he understood and knew that I was in secret communication with his wife.

Q. Well, go on, and state the whole conversation.

A. I understood that to intimate that improper relations existed, and I resented it at once. I told him then that I would not associate with him at all—that I would not have anything to do with him if he suspected me for a moment of a dishonorable act. Then some little things were said, and he went on then, in a very connected and calm way, to say: "If a lady goes to a gentleman's office at all, she don't go there for any good purpose. She must have a bad motive." I told him that was not the fact—that ladies often—I thought a lady could go anywhere to see a gentleman where it was necessary, and there was no harm in it, and I would not regard that as anything. Then he said, if an attorney, as a confidential attorney, has in his hands important business of his client, making or drawing important papers for him, conducting matters involving large amounts of money, is in ——— for the preparation of those papers or the transaction of that business, in connection with the other side, of course the natural inference would



be that he was acting in bad faith. And then he instanced my meeting Mrs. Hawes at the Lick House on the same evening that the original deed of trust had been executed. Well, I of course saw that there was something in what he said; and then I told him what I thought about it—how I happened to go there; that I had received this telegram, and had gone there to meet Mrs. Hawes at her request. Nothing at all had occurred about any papers or business which I had transacted for him, but merely to see what she had to say. I was not only his friend, but considered I was acting not especially as his friend, but the friend of his family; that I was as much Mrs. Hawes' friend as his; and I considered anything I could do for both of them there was nothing improper in my doing. But, I could see that I was acting in that delicate state of feeling—I thought I should hold no further communication with Mrs. Hawes.

Q. What was his manner and appearance during this interview?

A. It was calm and determined, firm and quiet.

Q. How long after this was it that Mrs. Hawes called at your boarding-house?

A. I think it was the next morning, or the second morning, and very soon afterwards she came there.

Q. What was her business with you then?

MR. BATES—Mrs. Hawes stated that. Do you want it over again?

MR. PRATT—I don't recollect whether she did or not.

MR. BARNES—I object to what transpired.

THE COURT—I will overrule the objection.

MR. PRATT—Q. What was her business with you on that occasion when she called at your boarding-house?

A. Well, I think her general purpose was stated to see if there could not be some understanding between herself and Mr. Hawes. But she said to me that she had—

MR. BARNES—[Interrupting.] Wait a moment. He has already stated the general object of her business, and I object to his giving that testimony.

THE COURT—That is sustained.

MR. PRATT—What did you do immediately after she went away?

A. I went immediately out to Mr. Hawes'. I will state that I notified her that our communication must cease; that I still felt as friendly to her as I ever had, but thought that, acting as I was with Mr. Hawes, it was improper for me to have any communication with her. She had plenty of friends who could advise with her in anything that she wished to do; and that my relations or communications with her must cease.

Q. And you went immediately out to Mr. Hawes'?

A. I went immediately out to Mr. Hawes', to communicate something which she told me.

Q. Did you see Mr. Hawes, and have an interview with him?

A. I did.

Q. What was the conversation?

A. I told him Rev. Dr. Stebbins would be there that day at two o'clock.

Q. Did you tell him how you knew the fact, and how you got your information?

A. Yes, sir; I did.

Q. State this conversation as it occurred between you and Mr. Hawes.

A. What the conversation was—the purport of it was—I can't give the language—that I had seen Mrs. Hawes that morning, before I left the house to come down town, and that she had told me that the Rev. Dr. Stebbins would be at his house that day at two o'clock to see him relative to her affairs.

Q. Well, what did he say to that?

A. Well, Mrs. Hawes said that the Rev. Dr. Stebbins had an engagement to meet him there, about at, say about two o'clock, but that he was not coming for any such purpose—that he was too much of a man to attempt any such business, or something like that—to interfere in his matters.

Q. What did he say, if anything, to Mrs. Hawes?

A. I think he said it was one of her lies. That was the word he used.

Q. Did you see Mrs. Hawes again the same day?

A. I think I met her when I came in.

Q. Do you know anything about the preparation and execution of that second deed of foundation?

A. Yes, sir.

Q. By whom was that paper—

MR. BARNES—[Interrupting.] I object. It does not tend to rebut our case, nor is it evidence.

THE COURT—It strikes me that that objection is well taken.

MR. PRATT—It might be to that particular question; but, of course, the object of the testimony is to show that Mr. Hawes prepared it himself, and during that time he was in frequent interviews and conference with a great many parties, in which allusion was to his wife and family, and the disposition of his property, and everything else, and to show that these bursts of passion and rage, were not habitual at all, and were not frequent, and only occurred a few times. Their theory is that whenever—they take the broad ground—that whenever his wife was referred to, he burst into one of these terrible fits of passion, and all that sort of thing. It seems to me that the whole of that testimony ought to be before the jury, that they may—to enable them fairly to hear and determine.

MR. BARNES—I object to the witness stating any time he talked to Mr. Hawes about his wife. I want it to go to the jury on what he said and did.

MR. PRATT—The very papers themselves will give the foundation, put in evidence by the other side, and they claim that it bears upon its very face the marks or traces of an insane mind, acts or schemes impracticable and absurd, and all that sort of thing.

MR. BARNES—I don't know that that would be the object of that at all.

MR. PRATT—They have put that deed in evidence, and we have the right now to know exactly how it was formed, and who formed it, and all the circumstances of its production.

MR. BARNES—It speaks for itself. I simply put it in evidence to show that Mr. Hawes made a disposition of his property, and that it was contrary to the dictates of natural affection, and to that regard to those upon whom the law would cast succession of his estate to bring it within the case.

MR. PRATT—The counsel notified us when he put it in testimony that he should comment on it in due time and show that no man of sane mind would frame such an epistle as that was; and whether it

was for that purpose or any other, that is one of the particular which they themselves have put in testimony, and as to that part fact I apprehend that we are entitled to almost any latitude in the examination of our witness.

MR. BARNES—So far as commenting upon it is concerned, the speaks for itself.

THE COURT—I will sustain the objection.

MR. PRATT—Q. How often were you with Mr. Hawes in the execution of the last deed of foundation? How frequently?

A. Almost every day. I had daily communication with him.

Q. How long did you usually remain?

A. An hour or more. It would depend upon what had been done.

Q. Was there generally any conversation on the subject of his estate and family—provision to be made for them?

A. Yes, sir.

Q. What was his manner and appearance during those conversations?

MR. BARNES—I object. We are getting now the same answer as we got this morning. The Court struck it out. It is all testimony, chief.

THE COURT—I don't see how I can sustain the objection to the question, though I might sustain the objection to the answer if it were within the ruling of this morning.

MR. BARNES—Well, I withdraw the objection for the moment.

MR. PRATT—What was his manner or appearance during this conversation?

A. I did not notice anything unusual in his manner or appearance—the same as any other person would be attending to business.

Q. There was not any change in his manner or appearance when allusion was made to his wife—providing for her?

A. No, I cannot say there was. The mentions were merely casual of his wife, as they might casually occur in a conversation about business matters. He had told me that he—he repeated it during that time he intended to—it was in reply to remarks that I had made—that he intended to act justly towards his wife and liberally, and whenever the subject came up, which it did several times in conversation at that time and other times, he always made about the same remark in relation to that he intended to act justly and liberally towards his wife. “Also,” he would say, “not only towards her, but to every person who has the slightest claim upon me,” he would say. And whenever a matter was referred to, he would always reply in that way.

Q. How often were you there from the time of the execution of the second deed up to the time of his death?

A. I was there very frequently. I don't recollect—I think pretty much every day. I think that deed was executed on the twenty-first of February, was it not?

MR. PRATT—Yes, sir.

A. I was there pretty much every day, or at least once a day from that time to the day of his death.

Q. Did he ever make any complaints against his wife to you during that time?

A. I think not, from the time I commenced assisting him in the execution of the last deed of foundation until his death—I don't recollect. There was a period after that referred to myself, which he spoke of, when

spoke about my intimacy or calling on Mrs. Hawes, or visiting her, for sometime after that I saw comparatively very little of him. I waited always until he sent for me. That was, I think—this was sometime in the early part of September that that occurred, and then until he sent for me to make out this other deed of foundation, I only visited him occasionally. I did not visit him frequently until just before or perhaps sometime late in January, and during that time I do not think any reference at all was made to his wife; I have no recollection.

Q. You began to go there often—some time in January—you went there almost daily?

A. Yes, sir.

Q. How often did he speak about his wife, and in what manner, during that time?

MR. BARNES—He has already answered that.

A. There was nothing unpleasant that I recollect of; he never mentioned her unpleasantly. I think Mrs. Hawes was then in the house.

Q. About what time did she go from Redwood City?

A. I don't know the exact day, but I know some days before I commenced working on this deed with him I met her there, and I said to him—as she was then living at Redwood and had come down to visit him; I knew they had not had any intercourse for some time—I said “I am glad to see Mrs. Hawes back, I think she is the proper party to wait on you and talk to you now, and I am glad to see she is back.” His reply was, “Well, she seemed to be in proper submission, and I permitted her to come back.” And then when any reference was made during that time I think it was pleasantly—always—never offensive towards her. But then I did not know with reference to it one way or the other, other than merely from a casual remark.

Q. Did you see her often in his presence during that time?

A. I did.

Q. How did he treat her?

A. Well, he did not show any particular affection for her, but I think it was more with neglect than anything else. She would come in and do what she had to do without having much to say, till just before he died, I think a day or two before he died he did show that he had some affection for her, that was what struck me the day he died, I recollect that morning I was in there, and Mrs. Hawes was also present, and Mrs. Hawes was going out of the room for a few moments, and she asked me to remain. I stepped up to his bedside to say if he wished anything, and he spoke to me and made some remark about his disposition of property. He said it is all right, they are all right, and then he looked around and he asked where Mrs. Hawes was. I said—

Q. [interrupting]—Did he speak to her? Did he use that term?

A. I do not recollect whether he said Mrs. Hawes, or my wife, or Dolly; but he asked where she was. I said, she has just stepped out for a moment; she will be back in a moment. He then looked around, and called out in a loud voice, Dolly! Dolly! or Mrs. Hawes. Then she came in, and went to his bedside, and he said, where was you going to? She said she had just gone out for a moment. He said, I did not want her to go at all, but wanted her there. She was there waiting upon him, and doing everything she could for his comfort.

Q. How did he usually speak of her when he referred to her—what terms did he use? Did he call her his wife, or Mrs. Hawes, or by some other name?

A. Well, my impression is, that during the time he was married, he would speak of her as "this woman," and during this period, I think he called her "Mrs. Hawes," or "my wife," or "Dolly." I do not recollect anything that occurred, though, that showed him—I do not recollect anything that occurred there that showed him—

Q. [Interrupting.] Do you recollect the circumstance or occasion in regard to paying some hack fare—about hiring a hack or carriage?

A. Yes, I think there was something like this occurred. I think that while she was at the ranch she came in several times. She was there to make inquiries and he became annoyed, and said he could not count the money up, or something—he was impatient; but I was about the substance of it.

Q. All that occurred before, or after she came there, or stayed there?

A. I think that was before.

Q. Well, now, on what terms, as compared with other terms, did Mr. Hawes and Mrs. Hawes seem to be after she came back there to stay—from that time up to his death?

A. Well, I think they were on better terms than they had been before.

Q. On better terms than they had been when—at what time?

A. Well, from the time of the quarreling down at Redwood to the reconciliation, I do not know how that was ever brought about, or when it took place exactly.

MR. BARNES—What did you mean by reconciliation?

A. When she went to take care of him—that is, no, not before. There had been some sort of misunderstanding, as I understood.

MR. BARNES—[Interrupting]—Never mind what you understood. If it simply had been on what you had heard, I do not want you to state it. If you know of any reconciliation between them, state it.

A. When I met Mrs. Hawes there the first time after this reconciliation, she was then living at Redwood. In coming in, I think she was seeing me, and then going out to Redwood again. Subsequently, that she came in to live; she was at the house all the time, up to the time he died.

MR. BARNES—That is what you mean by reconciliation?

A. Yes.

Q. When he let her come and stay in the house?

A. No; before that he would not hold any communication with her, as I understood.

MR. PRATT—When did Mr. Hawes first speak to you at all about fixing up his will, or making his will?

A. All that he said to me was in relation to that and the safe itself. He gave me the keys, and told me the combination of his safe, and told me to open it, and look in a certain place, and I would find a certain package of paper in the pigeon-hole, and that the package contained his will—and bring the package to me. I did as he directed, took the package of papers out, and handed it to him. He selected what I supposed to be his will, and I put it back in the safe where he told me. Then, when I came back, he asked me to place this paper which I had taken out in his secret place, which I did. He said that he wanted to make some changes in it, which was his will. He asked me to send him out some man who would write, to copy it.

Q. Did you do so?

A. I did.

Q. Whom did you send?

A. I think I saw a friend of mine and asked him about some one, and he said that Mr. Lee was doing nothing, and perhaps he would like to go out. I asked him to send him out. I think this gentleman sent Mr. Lee out. I do not think I saw Mr. Lee about it.

MR. BATES—Tell what you did.

A. I made arrangements with this person to send out Mr. Lee; authorized him to send him out at ten o'clock the next morning.

MR. PRATT—Q. Did you see Mr. Lee there?

A. I saw Mr. Lee there; yes, sir.

Q. Did Mr. Hawes ever assign to you any reason why he did not execute his will before Mr. Barry?

A. It came out complainingly when he was speaking of Mr. Lee. He said, speaking of Mr. Lee's getting improper persons for him, and he had sent him to get persons to witness his will. He said when he was out there at Mr. Hawes' house that he told him to get witnesses to come out there.

MR. BARNES—Something Mr. Lee told you, you are telling now?

A. Yes, sir.

MR. BARNES—You can drop that.

MR. PRATT—Q. What did Mr. Hawes say then about that matter of the witnesses?

A. Mr. Hawes said Mr. Lee had gone off and brought Pat. Barry, and, I understood him, a German, or a corner grocery-man, I think Mr. Hawes said to me. That is the impression upon my mind—that he brought Pat. Barry and a corner grocery-man as witnesses to the will; that they were not proper parties for him to execute his will before. They were not well known, or were not the kind of persons he wanted to execute his will before; that fortunately there was something about the paper which gave him an excuse to send those persons off without insulting them, and of which he availed himself, and sent them off without executing it before them.

MR. PRATT—Q. What do you mean by those parties; the witnesses Mr. Lee had brought?

A. Yes, sir; the witnesses Mr. Lee had brought.

Q. What kind of men did he say he wanted?

A. Men well known in the community, or men whose statement would be believed by any Court in the world or Christendom, or something like that. Men of well known reputation and standing.

Q. Did you ever have any talk with him about his will after that conversation?

A. I think I had no further conversation about it.

Q. Well, had you prior to that discussed the provision he was making for his family, and the probabilities of the will being enforced? When did that take place?

A. Sometime, I suppose, a week or so before he died. He remarked to me, explaining how that there would be no contest about the will. He said Mrs. Hawes—"the only staff that she has to lean on is contained in the will." And I recollect of his making a remark to me, but I do not recollect when or how it came out, but something about his sanity. He said: "Everybody transacts business with me as with everybody else, and I am brought in connection with too many people, even to—"

MR. BARNES—Go on.



WITNESS—Well, the idea was—I do not recollect—too many people had seen him and knew that he was sane to enable anybody to say he was otherwise.

MR. PRATT—Q. Did you ever find him alone on any of the visits?

A. A great many times. Yes, entirely alone on one occasion.

Q. What explanation did he give of being alone, if any?

A. Well, he said that the gentleman who was with him there, Everett, I think, who was a kind of Superintendent, had gone and left—had settled with a young man, a foreigner, whom he could not find out anything at all about, and settled with him until the day—paid him up until the next day; that after Mr. Everett went this young fellow came in there and said that Mr. Hawes owed one dollar; that he had neglected to tell Mr. Everett, that he had paid out for him for milk one dollar. Mr. Hawes said he “did not know his manner, and didn’t know but what,” he said, “he might be in connection with burglars,” said he, “it is generally known that I am a rich man—it may be supposed outside that I have a large amount of money in the house. I do not know anything about this young fellow so I told him to go up and tell Mr. Everett to come down; but I did not think he will be back.” There was no one in the house at all when he came up. He then asked me to go and see some Spanish woman whom he knew, and told me where I could find her, to get her to come and stay all night with him; and I did so.

Q. Did Mr. Hawes continue to transact business up to the time of his death?

A. Yes; I know up to within three hours of his death—I was with him up to that time, and whenever there was anything to do he always did it—business. I was there about twelve o’clock on Sunday, and was then engaged—Mr. Howard was there—engaged in settling a matter at the ranch—building out there—he was attending to it all the time.

Q. How often did the transaction of business take place there? any kind of business?

A. Quite frequently. He seemed to keep the run of everything every ten cent piece that was spent in the house.

Q. Were there callers besides those that came on business?

A. Yes.

Q. People coming and going?

A. Yes; all of the time.

Q. How often—to what extent?

A. When I was there I saw a good many persons there; I do not know the extent exactly.

Q. How did they treat him and deal with him?

A. Well, as far as my observation went, just as they would with any other sick—

MR. BARNES—[Interrupting.] Wait a moment! I move to stop that out.

THE COURT—Strike that out. [?]

MR. PRATT—Q. Did Mr. Hawes ever express to you any fear of being poisoned or being killed in any way?

A. I do not recall anything that he ever said to me in relation to that.

Q. Did he ever allude to the matter at all, or express any fear that anything would happen?

A. I have heard him say that the cooks would kill him in giving him bad provisions, or little cooked provisions, or make a mistake; that the nurses would give him the wrong medicines, or something of that sort; I do not recollect—it never struck me as pertaining to assassination or anything of that kind at all, at any period.

Q. Did you ever hear him speak of the Ladies' Protection and Relief Society, and the condition of its inmates and comparing it with his own? If so, state how the conversation arose and what it was?

A. Well, we were riding near there and he caused the carriage to stop when we got near the place, and he looked at it and seemed to congratulate himself upon having done something towards erecting it; and then he said "those people in there are well provided for; a comfortable home, and live well and comfortably;" said he, "they are much better off than I am;" he then compared his own condition—he was then very much alone.

Q. Did he say anything to you about the Catholics?

A. Well, he talked to me as if he believed the Ladies' Protection and Relief Society and the Catholics would come and take care of him, and see that he wanted for nothing—take care of him in his sickness there. He complained that the Ladies' Relief Society had not done it, nor either had the Catholics. He spoke particularly of Father Gallagher's church. He had done a good deal for them, giving them their site, etc., and at the last moments he said that they ought to do everything for him, and they had neglected it. He spoke of it in that way.

Q. You heard Mr. Lee the other day speak about Mr. Hawes, while writing his will, laying back and closing his eyes often continually, did you?

A. I was present when Mr. Lee delivered his testimony.

Q. Did you ever see anything of that kind in Mr. Hawes; if so, state what his usual habit was?

A. As I understood Mr. Lee's testimony, he spoke as if he thought Mr. Hawes went asleep and would forget what he was talking about, and then revive again and go on. I never saw anything of that sort in any transactions with him. When I was taking down anything for him, committing it to paper, he would sometimes close his eyes and wait until he had got a whole sentence or paragraph fixed in his mind, and then he would recite it right off, and I would put it down as he talked it out. His memory always struck me as remarkable.

Q. What was the regulation of his household in regard to contracting bills?

A. I know nothing about it except what he told me.

Q. What did he tell you?

A. He said nobody had a right to contract any debts of his for him—that he paid as he went—without a written order; that he paid as he went. It came in connection with some quarrel that was going on at the time.

THE COURT—Q. With what?

A. Some quarrel. He was then talking to somebody who had presented a bill he had not authorized, or claimed he had not.

MR. PRATT—Q. What was his conduct in his last sickness in regard to secretness in the transaction of his business?

A. He wanted everything that I was doing for him—wanted me not to say anything about it to anybody, unless he gave me special directions to do it.

Q. What disposition did he manifest, so far as Mrs. Hawes' living what was going on?

A. I understood that that applied to her as well as everybody. I do not remember anything special was said.

Q. Did Mrs. Hawes seem to know everything that was transpiring?

MR. BARNES—Well, I object.

THE COURT—I sustain the objection.

MR. PRATT—Q. Mr. Bartlett, when did you first hear any expression of suspicion of Mr. Hawes' sanity?

MR. BARNES—Well, I object to that.

THE COURT—What is the ground?

MR. BARNES—It is irrelevant and immaterial.

THE COURT—Suppose he never had heard?

MR. BARNES—It is immaterial whether he had or had not.

THE COURT—I addressed that remark to Judge Pratt. Would it have any material effect in the case?

MR. PRATT—I think it would, your Honor, from the fact that Bartlett was there every day, and sometimes oftener, during the months of his life, and saw all of these people around there claimed to have considered him insane, and one or two of whom that they treated him in that way as an insane person. If he was there during all this controversy, or all of these troubles, and heard any one of them, or any person else, express a suspicion or doubt, as to his present sanity, it strikes me it would be quite material fact to show this to the jury.

MR. BARNES—It does not appear that this witness ever had any conversation with these people who were there, or who testified in regard to Mr. Hawes, with reference to his condition, or anything else.

THE COURT—I sustain the objection.

JUDGE PRATT—I except.

MR. PRATT—In any of these various conversations, from the time, did you notice any change in his manner when allusions were made to his wife, or the subject of providing for her was discussed?

MR. BARNES—He has already answered the question.

MR. PRATT—Q. Did you answer that question once?

A. I think so; yes, sir.

MR. PRATT—Q. You heard one witness, or perhaps more than one speak, I believe, of a glitter in Mr. Hawes' eye at times; did you observe that any time?

A. Yes, sir; I did.

Q. Was it usual or otherwise?

A. I think it was usual when he was a little excited. It is a general expression which usually consumptives have. There was nothing wild about it, just the clear expression which people who die of consumption have. I had a brother who died of consumption who had that expression actually in his eyes; his eyes were clear.

MR. BATES—Q. He died of consumption, you say?

A. Yes, sir.

MR. PRATT—Was there anything in the general character, life and conduct, or ideas of Mr. Hawes, which distinguished him from the general run of men?

MR. BARNES—I object. If there is any evidence of that kind to be introduced, it should have gone in at the first.

THE COURT—I sustain the objection.

MR. PRATT—The Reporter will note an exception to the ruling of the Court.

Q. What was his natural temperament?

MR. BARNES—I object.

MR. PRATT—Now, if the Court please—

THE COURT—[Interrupting]—I will allow that question to be asked.

MR. PRATT—Q. What was his temperament naturally?

A. He was naturally quick-tempered, cross, very irritable—very bitter.

Q. What were his views of his abilities, capacities and sagacity?

A. Well, he had a very high opinion of himself—of his own judgment and ability—great reliance upon his own judgment and powers.

Q. What was his general treatment and conduct towards other people?

A. Well, it was courteous so long as they did not cross him, but when they did, it didn't make any difference who it was, he was very bitter.

MR. PRATT—Q. What were his views, habits—that is, with reference to their being loose and careless or precise?

A. He was very precise about everything. He seemed to be as careful and precise about a transaction which involved a ten cent piece as he would be of that of a hundred dollars.

Q. What was his esteem or appreciation of the value of the uses of money and property?

A. He seemed to have a very high appreciation of their uses and value.

Q. How was he about his personal expenditures; liberal or parsimonious?

A. Very parsimonious, I should say, very close.

Q. Was he a suspicious and cautious man, or a confiding and trustful one naturally?

A. I think naturally he was very suspicious.

Q. From all your intercourse with and observation of Mr. Hawes, have you a settled opinion as to his sanity or insanity?

MR. BARNES—Do not answer that question. Now, the counsel knows very well that that whole subject was closed out.

MR. PRATT—I understand it very well, and I do not propose to have any argument or controversy at all, as I accept the ruling of the Court with the utmost cheerfulness. I merely want to get my exceptions on the record at the proper time and place. Of course I do not propose to resist the ruling of the Court, or to manifest any disposition not to submit with the utmost cheerfulness. There is no occasion for any petulance on the part of the opposing counsel at all.

MR. BARNES—I object to the question.

THE COURT—I overrule the objection to the question.

MR. PRATT—Just answer this question yes or no, Mr. Bartlett.

Q. From all your intercourse with and observation of Mr. Hawes, have you a settled opinion as to his sanity or insanity?

A. A very decided opinion.

MR. PRATT—The next question you will, of course, not answer, unless permitted. What was your opinion?

MR. BARNES—I object.

THE COURT—The objection is sustained.

MR. PRATT—What is the ground of the objection?

MR. BARNES—It has already been stated, argued and ruled upon.

MR. PRATT—Well, if you rest upon that simple objection, we be very glad to have you—

MR. BARNES—I object upon the ground of the reasons already stated in the argument of the question, and as to the burden of proof and right of the proponents to introduce new testimony. That it is inadmissible under reasons stated.

THE COURT—The objection is sustained by the Court.

[The counsel for the Executor and for Mr. Evans, and the devisees under the will, all the parties, except to the ruling of the Court.]

THE COURT—I may as well state to the gentlemen that you will have to agree as upon the exceptions.

MR. PRATT—We have agreed upon them.

THE COURT—As the case was rather confused, I said I would not bind the parties here, because the statute required me to do so, but I have not thought about the case at all since that time. There cannot be but two sides to this case, because the will is either sustained or not sustained.

MR. BARNES—That is precisely the ground upon which I put the case at first.

THE COURT—There has been no trouble arising yet. I said I would consider that when it came up.

MR. BARNES—There is this about it ; Mr. Evans—

MR. PRATT—[Interrupting]—If the Court please, I had a consultation with the counsel of the executor when the case first commenced, and he told me to go on and try the case.

MR. KENNEDY—I merely stated that I did not call the witness, I did not object. But as a party for the will, as a matter of course, I have no objection.

MR. PRATT—Simply leave it for us to manage.

MR. BARNES—Of course, if that is the understanding that Mr. Evans is here for everybody on their side, including the executor, why I have no more to say, if that is the arrangement; but I was not aware of it before.

*Cross-Examination by Mr. BARNES—Q.* You stated on your direct examination, that when Mr. Hawes was making the arrangement with you with reference to little Horace's education, you asked him if he proposed to prevent Mrs. Hawes from seeing her child, and he said he had no objections to her seeing him. Am I correct ?

A. Yes, sir.

Q. Now, where was little Horace at this time ?

A. Where was he ?

Q. Yes.

A. I think out in Ann Arbor, Michigan.

Q. In Ann Arbor, Michigan ?

A. I think so, though I don't know personally.

Q. Did he go to Europe from there ?

A. Yes, sir.

Q. Did he ever come back here ?

A. No, sir.

Q. Did you know at the time that Mr. Hawes was going to him direct from Ann Arbor to Europe ?

A. I knew he was not coming back here.

Q. How long was he to be gone ?

A. Five years.

Q. Then what did you mean by asking Mr. Hawes if he proposed to keep Mrs. Hawes from seeing him when you knew he was in Ann Arbor, and that he was to be gone for five years?

A. I refer to when he came under my protection. Whether he expected that I would prevent Mrs. Hawes from seeing the child?

Q. When?

A. After his death. As long as Mr. Hawes lived I considered I had nothing to do but to look out for this money; no responsibility or direction about the child.

Q. Were you there taking Mr. Hawes' directions as to whether after his death you should prevent the child's mother from seeing him?

A. Trying to ascertain what his feelings were on the subject, with a view that if he had said he did not want her to see him, I should have refused to act.

Q. Your remark related to the expiration of the five years in Europe; at the end of that time whether you should interpose to prevent her from seeing the child?

A. No, sir; that is not it at all.

Q. Let us have it?

A. I did say this; that at that time Mr. Hawes talked to me as if he did not expect to live but a very short time. My question referred to after his death; after he came under, to some extent, my control: whether it was a part of his plan for me to prevent the child seeing his mother.

Q. Did you not know rather that the object of Mr. Hawes getting the child out of the country with Professor Evans, was to get him away from his mother, among other things?

A. I know what he said to me; that he wanted him educated away from his mother.

Q. Did you know that was the object of it?

A. That was one of the objects of the arrangement; to get him a good education and away from her influence.

Q. When Mr. Hawes got excited about the grain, as you say, on the 20th of August, 1870, and went to his room and denounced his wife to you, I want you to tell the jury, if you can, what he said.

A. I think I have given the conversation as near as I can. It was a matter that was very unpleasant to me at the time, and I did not want to hear it, and, just the first moment I could, I put a stop to it.

Q. Let me ask you why it is that if you're able to remember these other transactions with such remarkable particularity, their successive order of time and events, that you cannot remember a thing so extraordinary as an attack of a husband upon the chastity of his wife, and which made such an extremely disagreeable impression upon you?

A. Well, I knew that that was the talk, but then I don't recollect the exact language that he used on the occasion. I have not in all of my testimony pretended to give the exact language of Mr. Hawes, as near as I can remember.

Q. I did not ask you to give the exact language, but I ask you to give it to the jury just as near as you can.

A. I think I have done that.

Q. I ask you to give it to the jury just as nearly as you can.

THE COURT—He says he has done that once.

THE WITNESS—I recollect one thing he said; that she was not fit to be in any man's house.



Q. Anything else ?

A. She was not a virtuous woman; but the words that he u  
don't recollect; that was the idea.

Q. Was his language profane ?

A. I don't think he swore, but I think that the word he used  
haps was not very refined or delicate. I think that is probably it  
it gave me that idea distinctly, that he laid that charge again  
wife.

Q. That is all you remember about that ?

A. Yes. That is more the impression than the language.

Q. I ask you now, under your oath, is that all you rememb  
that occasion ?

A. I have stated, Mr. Barnes, my answer. As I stated befo  
have given all I recollect.

Q. That is the whole of it ?

A. On this subject; yes, sir.

*Re-direct Examination* by MR. PRATT—Q. When he accused hi  
of these things, did he seem to believe them to be true, or was it m  
to vex and annoy her ?

A. From his manner—

MR. BARNES—[Interrupting.] I object to that. Now the co  
has already had his full swing at the witness, and asked him a  
pleased on this subject. He has been examining this witness no  
and a quarter hours, and I have asked him three questions.

MR. PRATT—That is not the question I propose to ask him.  
the permission of the Court to allow that one to be asked.

THE COURT—That is the only one ?

MR. PRATT—Yes, sir.

THE COURT—Ask it.

MR. BARNES—I withdraw my objection.

MR. PRATT—Did he seem to believe these things against his wi  
was it simply to vex and annoy her ? That was the question.

A. I say that he was mad when he said so; but his not repe  
it afterwards, I regarded as an abandonment of that charge; th  
the way it appeared to me. But when he said that in the first p  
he said so very emphatically and decidedly; but when he can  
repeat over the various grievances, he did not say that, but merely  
these other remarks.

MR. BARNES—You say he appeared to abandon it. I unders  
you to have told the jury that Mr. Hawes subsequently charged  
personally with being in an improper intimacy with his wife, and  
he meant improper relations; and you had resented it; and the  
said that if a lady went to a man's office she did not go for any  
purpose; did you say that ?

A. Yes, sir.

Q. Did you regard that as an abandonment of the charge.

A. I am speaking now of the night when this conversation  
place. He made this charge, but when he went to repeat it more  
fully, he did not put this in; and I regarded that as an abandon  
of that which he said just before; but then of course he may  
entertained the opinion afterwards. I don't know.

Q. You mean to say you consider he abandoned the charge bec  
he did not speak of it this time ?

A. At that time he abandoned it.

Q. What do you mean? That he said it was not so, or did not repeat it?

A. He did not repeat it.

Q. That is all?

A. That is all. He repeated a different thing.

HORATIO STEBBINS called for the executor—sworn.

*Examined by MR. PRATT*—Q. How long have you resided in San Francisco?

A. About seven years.

• Q. What is your profession?

A. I am a minister.

Q. Did you know the late Horace Hawes in his lifetime?

A. I have known him since 1865.

Q. How did your acquaintance with him arise?

A. I went to see him first at his house on Folsom street for the purpose of hiring his house; the first time I ever met him.

Q. What were your relations with him—friendly or intimate, or otherwise, and when did they become intimate?

MR. BARNES—Well, it don't appear that it was—let him go on and state it. This witness certainly is competent to state what he knows about Mr. Hawes without being helped.

A. My knowledge of Mr. Hawes began in the Summer of 1865. I saw him occasionally for two years, say; I saw him then more frequently; I saw him quite often before his voyage to Europe; on his return from Europe I saw him still more frequently, and for about four-and-a-half or five months before his death I saw him every day.

Q. When did he first speak to you on the subject of founding or endowing any public institution?

MR. BARNES—Wait a moment, Mr. Stebbins. I object to that, that it is immaterial; it has no connection to the subject at all?

THE COURT [after discussion]—I have allowed the question to be asked heretofore and it can be asked again.

MR. PRATT—When did he first talk to you on the subject of founding or endowing some public institution?

A. In 1865.

Q. How did that conversation arise, and what was it?

A. It was a mere suggestion that I made him; he said he wished to meet me to consult with me on matters of education, concerning the founding of an institution of learning. I told him I would be happy to meet him.

Q. Did you meet him?

A. No, I did not.

Q. How many times probably did he speak to you on that subject before he went to Europe?

A. It is impossible to tell, sir.

Q. More than once?

A. Yes, sir.

Q. Did he always express the same general views in regard to the deed? Did he at any time abandon the project? State what general views he expressed on the subject whenever he spoke.

A. He always spoke to me of it as if the matter was revolving and developing in his own mind; he was writing out schemes and remodel-

ing and making a consistent system, at least, consistent mind.

Q. Did he ever express to you his views on the propriety of leaving large inheritances to children—large sums of money?

A. He said he did not think it was wise policy to leave large sums of money to children.

Q. Did he assign any reasons why—was there any conversation on that subject?

A. Never, I think.

Q. Do you recollect about when he first spoke to you on that subject?

A. It was in an interview I had with him at Redwood. We were riding over the farm on horseback. The boy was with us and one of his men servants on the farm. I expressed my satisfaction of the boy, that he was a pleasant boy, and he seemed gratified and said: "But I shall not leave him the money."

Q. Do you recollect in what year that was, Doctor?

A. I cannot say. I should say it was three years ago, or not tell into six months in regard to that conversation. Mrs. Hawes can refresh my memory in regard to it, I do not know whether it was either in October, three years ago now, or three years ago in May.

Q. When was your last conversation with him on the subject of endowments to these public institutions?

A. My last?

Q. Yes, sir; the last?

A. Well, sir, the Saturday night before he died.

Q. What day of the week did he die?

A. He died on Sunday.

Q. What were your personal relations towards Mrs. Hawes and the family generally?

A. They were relations of confidence and respect, I should say.

Q. Did Mrs. Hawes ever speak to you on the subject of domestic troubles?

A. She came to me to ask me my opinion in regard to the subject.

Q. At your house?

A. Yes, sir.

Q. Can you fix the time?

A. I cannot fix the time except by referring to some of the conversations I have been recited here this afternoon.

Q. Well (?)

A. Mrs. Hawes has spoken to me several times—

MR. BARNES—[Interrupting.] Never mind that. I do not want to give the conversations, if you please; simply to know if you were conversing with you?

A. She did.

MR. PRATT—Fix the time, then, with reference to those conversations proposed?

A. I fix the time here with reference to the wheat business, which was after that.

Q. Did Mr. Hawes ever converse with you or speak to you on the subject of his domestic troubles and complaints against his wife?

A. No, sir.

Q. After his return from Europe, where did you first see him, and how did it happen; that is, was it at his request or otherwise?

did it happen? You were there, as you say, daily, as you say for the last four months of his life?

A. I cannot recall precisely the occasion on which I met him after his return from Europe; but I began to see him frequently at his place on Folsom street in the autumn after his return from Europe, and I began to see him at the request of Mrs. Hawes.

Q. Did he ever make any especial request of you, to visit him frequently, or otherwise?

A. Yes, sir.

Q. What was that conversation; what did he say about it, or about you?

A. He expressed a great satisfaction from personal interviews with me, and I told him, said I, "If it will be any pleasure to you, or give you any comfort, I will come and see you often," to which he said, "It would be the greatest comfort; it would prolong his life," and I said to him, "I will come and see you every day, if it is in my power, sometimes it will not be."

Q. Did he converse with you freely on all of these visits and occasions?

A. Yes, sir.

Q. What were the subjects of conversation?

A. Pretty much everything in the range of human experience.

Q. Did he ever talk of the subject of politics?

A. Yes, sir.

Q. How much?

A. He gave me a history of the Consolidation Act.

Q. Did you have any conversation on the subject of religion?

A. Yes, sir.

Q. What was that conversation, substantially?

A. It would be difficult to state it at large, sir.

Q. I want to know the general bent of his mind.

A. Shall I state a circumstance, or any set of circumstances in that direction?

Q. Yes, if you please.

A. Mr. Hawes once expressed the opinion to me that he would like to take a ship, and go out into a change of climate. I told him I thought it would be a mistake; that my experience had led me to believe that invalids who had gone away from home for refreshment, had commonly found distress. I told him, "I hope you will stay here at home, and go down through the valley of death with composure and support." I said, "I will do all I can to go with you." At which Mr. Hawes said, "Well, that would be pleasant." I told him, "I don't want to have you die without giving a sign. What do you think of the future? What are your views of the moral and spiritual world?" He said, "Well, that would be hard to tell." I asked him if he had any conception of the future life. He said he had; he believed in it, but it was difficult to give it a distinct idea, a distinct outline in his mind, but he looked forward to it as a fact and expectation, and as, on the whole, an improvement of the human condition.

Q. What did he say about the future of California and of the University?

A. He was accustomed to talk about California, dating back from his early experience, when he shot wild geese on Rincon Hill, up to the present time; and he said that the State of California would have no marked prosperity for thirty years.

Q. Did he go into details to explain to you his reason reached that conclusion?

A. Yes, sir.

MR. BARNES—Well, I object to that.

MR. PRATT—How often in this conversation did he speak of subject of endowing these public institutions?

A. He was inclined to talk on this subject very much.

Q. How did he express himself in these conversations in his children?

A. He was accustomed to say in general that he had plenty for all those dependent on him.

Q. With reference to his attachment or feeling for his children, love for them; what was his conversation in that regard?

A. He never said anything about his affections for anybody.

Q. What did he ever say to you about the probabilities of success of the University, and about its future, and how did he talk that, and how did he talk on this subject; extravagantly or wisely?

A. You have got two questions there, Mr. Pratt; which one I answer first?

Q. On the subject of the University?

A. He talked a great deal about the University and the Chamber of Industry; and he talked about them in a way which evidently evinced that it was a subject very weighty on his mind, whether they would succeed or not.

Q. Well, you and he sometimes discussed the practicability of the scheme?

A. Yes, sir.

Q. What were the objections? What suggestions did you make, and how did he receive them?

A. Mr. Hawes did not receive suggestions kindly; that is, intellectual kindness, I mean. He spun everything from his brain as a spider spins his web. He asked me to make suggestions, but I don't know that he ever took a suggestion; the only one I heard of was the one given to him by the ex-president of the Mont Eagle University, Mr. Havens. I made suggestions to him—I made objections in the way of objections to his scheme, or qualification of his working power. For instance, I suggested to him to join his movement with the University of the State, with which I was associated, and that if he desired he could there make an endowment so that it would really give character and determine the future of the University, and put his name on it forever.

Q. Was he impatient? Did he become impatient?

MR. BARNES—Let the Doctor go on. You have talked a long day; let him talk a little.

THE WITNESS—He did not manifest any impatience, but an want of confidence in such moves.

MR. PRATT—What answer did he make to that suggestion of his to the State University?

A. That would never do; the State University would never do anything.

Q. In what manner did he speak of the future success and continuation of the Mont Eagle University?

A. In regard to other suggestions—I made other suggestions

him concerning the University of the State, and joining it to the State.

Q. What were they?

A. I made suggestions to him concerning the external endowments, what we call the external endowments, that is, the stipulation that certain money shall be paid by society at large before his donation shall have effect. I made this general statement to him as a qualification of his donation. I told him that my experience had been, and reason seemed to confirm it, that if a man was embarked in a great enterprise of beneficence, it was commonly a qualification of that enterprise for him to say that he would give so much on condition that somebody else would give so much, and that his condition qualified the foundation, and would limit and qualify its success.

Q. How did he receive that suggestion?

A. Well, he received it, but not with respect; that is, with intellectual respect; no disrespect towards me, but he did not receive it with intellectual hospitality at all. He said that he did not wish to cram it down the throats of society; if they did not want it enough to give what he had enjoined in the conditions, they need not have it.

Q. Did he speak of his own fame and reputation in connection with the University?

A. Yes.

Q. How was he accustomed to speak on that subject, of the reputation of himself and the University?

A. In terms that would be considered by ordinary minds extravagant.

Q. Give some illustrations of that, if you please?

A. You confine me, now, to his opinion of the University, not of himself?

Q. Yes—take the University first, then.

A. He felt that the University would be, if this scheme was carried out, the greatest institution on the earth; that it would be the center of scientific, intellectual and literary life; that on the anniversaries, on the decades appointed for the gathering of the electoral college, once in ten years, that the scientific men of the world would come here, and that the seat of the University would be the seat of the wealth and refinement and education of the world; that is, it would be central; it would be the center of that influence.

Q. In that connection did he speak of the development, growth and increase of population of California?

A. Yes, sir.

Q. How did he express himself on that subject?

A. He was accustomed to speak of the surroundings of this bay and contrast it with the other portions—for instance his residence at Cannes. He compared and contrasted the value of property here with the value of property there, and the palatial residence, there with some that would be built here. He took the general geographical situation of the country, with reference to the world, its development of commerce, and the progress of social intercourse, and the increase of means of communication. He felt that the waters of this bay would be looked down upon by the most highly civilized portion of the globe.

Q. Now, how did he express himself in regard to his own fame in connection with all these things?

A. He had a great expectation in regard to his own fame which he left—in all the conversation I had in regard to it he desired that



his own life and reputation should be written up by somebody. Concerning his immediate reputation, he simply desired that he should be buried—that is, should be buried according to the arrangements he had made. He left the permanent reputation, his permanent reputation to mankind. He evidently was fascinated by it, looked for it, and delighted in it.

MR. BARNES—In what, Doctor?

A. In that reputation.

Q. Reputation; when, how?

A. That should be in the future. For instance, to illustrate what I said, that is at some future time, men should raise a monument taller than the monument of the University, he thought the proper inscription on it would be the simple word "Hawes."

MR. PRATT—What was his ordinary manner and appearance in these extravagant statements?

A. Usually sobriety and calmness.

Q. Did you often see Mrs. Hawes in his presence during visits?

A. Yes, sir.

MR. BARNES—Can't you exhaust one subject at that time?

MR. PRATT—Yes, sir; I have exhausted the other subject. I leave that for you now, Mr. Barnes.

THE COURT—I think we had just as well adjourn.

[Here the Court adjourned until ten o'clock Friday morning.]

#### FIFTEENTH DAY.

FRIDAY, DECEMBER 1, 18

REV. H. STEBBINS recalled for further examination.

By MR. PRATT—Q. Did you frequently see Mrs. Hawes in the presence of her husband during these interviews there—visits?

A. Yes, sir.

Q. What was his manner and conduct towards her?

A. Do you want I should state my interviews with them together from the beginning of my knowledge of them together?

Q. Yes, sir; to show whether there was any particular change or not?

A. I saw Mr. and Mrs. Hawes together the first time on my way to Redwood Farm, which I named yesterday. There appeared no affectionate or mutual, such as characterizes a family. Perhaps it might be that Mrs. Hawes appeared cowed, abject and unhappy. Upon it morally, it was a kind of cat and dog life, in that they were both around the same hearthstone, but evidently no same species.

MR. BARNES—Now, state how he appeared. You have stated how she appeared. Now state how he did.

A. He was silent, indifferent to any observation made by her, any suggestion she made at the table. That was the only place where she did make any; it attracted no attention from him.

MR. PRATT—After that, during all your intercourse with them, state what his treatment of, and conduct toward her was.

A. With them together?

Q. Yes, sir.

A. I next saw them together at the house on Folsom street. Whether I saw them together before these frequent visits commenced or not, I cannot tell, but during Mr. Hawes' last days or months, I saw them together almost every day, that is, when I called at the house, I found Mrs. Hawes there attending to her husband commonly; sometimes I went in and found him alone, but she came up—she came in from Redwood several times while I was there, and brought her daughter there and came to his bedside; but commonly, when I went there, I found her there, but on my coming in, she usually retired. Sometimes she did not, and when she did not, he directed her to.

MR. BARNES—Q. What did he say, Doctor? I don't propose to cross-examine you at all, and for that reason, from time to time, I call your attention to it—in what way did he direct her?

A. He directed her sometimes by simple suggestion. Once he directed her when she seemed to linger, he directed her with severity, "Leave the room! Why do you stand before me?"

MR. PRATT—Q. At such times, did she make any reply?

A. No.

Q. What did she do?

A. She left.

Q. How would you describe his usual manner and conduct towards her whenever you saw them together?

A. It was contemptuous.

MR. BARNES—Q. How would you describe her usual manner?

A. During the days of the sickness when I saw them together in the house on Folsom street, her conduct was careful and dutiful towards him; I cannot say that it was affectionate. There never seemed to be any affection in the matter. She came in once from Redwood with her child, and came to his bedside, and kissed him. I am a man of family; I treat my family with affection, but there was no affection then. The kiss was of putty, and it was received as a ball of putty might have been on a man's face.

MR. PRATT—Q. Did you, near the close of Mr. Hawes' life, see any indications of any softening on his part to her, or any tenderness towards her?

A. I did not see it; Mrs. Hawes herself referred to conduct, which she interpreted as amelioration.

MR. BARNES—I move to strike that out, from "Mrs. Hawes" to, and including the word "amelioration."

MR. PRATT—Q. Did you often see other and different persons in his presence, during your interviews with him?

A. Yes, sir. I saw a good many other persons there, and sometimes they were in the room with me.

Q. What was his general conduct and manner towards those who called on him?

A. It was respectful and cordial, as far as he was in the habit of expressing cordiality towards anybody.

Q. What was his general conduct and manner towards the servants about the house?

A. It was impatient.

Q. How, as compared with the treatment of Mrs. Hawes?

A. It was different, and the difference consisted in this: towards her, it was a deep antipathy; towards the servants, it was impatience and comment.

Q. Up to what time did Mr. Hawes continue to transact business?

A. I saw Mr. Hawes, for the last time, Saturday evening before his death. He was talking about whatever came up in matters of business. Up to that period, I think, he had something to say about business; the Saturday night when I left him, when I took leave of him.

Q. How did he transact business; that is, carefully, or carelessly, and indifferent?

A. He was very exact.

Q. How did the people who came into his presence behave towards him—treat him and deal with him?

A. They treated him kindly and respectfully.

Q. Well, with reference to his ability, and capacity, and industry?

A. How did they treat him?

Q. Yes; how did they deal with him—as with other people, carefully?

A. Entirely.

Q. Did he ever speak to you, or have any conversation with you on the provision which he had made, or intended to make for his family? What was the conversation on that subject?

A. On Friday night before he died, I asked him in regard to the provisions he had made, and he said they were ample.

Q. Did you ever observe any marked change in his appearance or demeanor in these interviews, when allusions were made to his wife and family?

A. No; I do not know that I ever marked any change in his appearance or temper. He never spoke to me of his wife but once.

Q. I will ask you to describe Mr. Hawes to the jury, mentally, morally, socially; analyze the man.

MR. BATES—What is the object of having his mental condition described?

A. You put me on the philosophy of human nature.

MR. PRATT—That is exactly what we want the jury to understand: what the man was in his normal condition.

THE COURT—If there is no objection to it, you can answer the question.

A. Well, Judge Pratt, I want to understand what you want me to say: whether I shall state what I understand to be Mr. Hawes' condition, or his character, or both?

MR. PRATT—Both; his organization. Describe the man, mentally, morally, and intellectually, and socially. We want to know what he was, and the jury want to know what he was.

A. Mr. Hawes was physically a light built man, thin, nervous, peptic; a man whose constitution, whose frame was an excellent one to be put into. It was a misfortune to any man to have such a frame. During the last five years of his life he was in poor health. His nose and chin came nearer and nearer together, and his appearance physically was sometimes exceedingly pitiful. Intellectually, Mr. Hawes belonged to the class of minds called analytical, instead of synthetical; that is, he could take things to pieces better than he could construct a whole. His intellectual reputation, if that is the province of what I am allowed to say here—

MR. BARNES—Say anything you have a mind to.

A. His intellectual reputation was exaggerated by many persons; the endowments of men are exposed to exaggeration as much as their wealth; he lacked ideality, he lacked imagination in his intellectual constitution, he had a fierce grasp of outward facts, the technicalities of the law, but he had not a great discernment of law; in some respects he was narrow-minded, in other respects he was exceedingly broad; his mind seemed to lay in patches, here and there; it was not developed into an orderly culture; it was not mellowed and refined by the climate of letters, though he was not an illiterate man; his mind was creaky, dry and hard at the joints; his character was accidentally the reflex of his constitution and his intellect; the chief elements of his frame were sharp intelligence for facts through self-will, and a recognition of moral relations simply pertaining to values—*meum* and *tuum*; morally, he had no conception of justice of right beyond the simple relations of value, that I could ever see, that is, he had no conception of the moral laws of a moral world, as an astronomer has a conception of the laws of gravitation and of the laws of governing the material world. That is about the sum of the man in a nutshell.

MR. PRATT—Was his social dispositions—how did he regard society as distinguished from individual men?

A. He was not a man to make any relations with individuals. If you will allow me to relate a conversation which I had with him, to illustrate my opinion of him at the time, and what I told him.

Q. Yes, sir.

A. During Mr. Hawes' illness he was exceedingly depressed with the feeling that he had no friends—that he was alone—that he was dying and alone. I told him that he must consider that his relations with men and society had not been such as to bring men around him in affectionate sympathy and respect, that that had not been his style of life or character, and that it was now the part of reason and faith for him to accept the consequences of that with composure and resignation; that is at his bedside, near his death. I told him—I gave him my account of his personal relations and manners with men, and that is the same that I would give now. He always treated me of course—I do know, he need not if he had not been a mind to—he treated me with cordial respect. I do not think there was any human creature, any of kindred blood, to whom he came so near having an affection, as he had for me.

MR. BARNES—Q. Was that without exception?

A. Do you mean was there no disturbance in that?

Q. Yes, sir.

A. He had one moment of impatience with me, and he may to somebody else have abused me—I know nothing about that, but to myself his conduct always was more than respectful; there was something in it mild; and I have received two or three little expressions and looks from him that were unmistakably tender and kind. On one occasion—shall I relate it?

MR. PRATT—If you please.

WITNESS—[Continuing.] I was sitting by the bed-side and waiting on him as I was accustomed to. Sometimes he wanted I should show him some papers; that is, manuscripts, documents, of his, that were in the little pigeon-hole-secretary near by. Mr. Hawes was a man impatient of all dullness, or want of apprehension. If he made a statement to you and you did not see it in a minute, he was at once in arms. A servant coming in, called in by the tinkle of his bell, is re-

requested to spread a newspaper across a chair before the fire to keep the heat from his face. The servant does not see how to spread the newspaper across so as to make the greatest surface of reflection; he spreads it across narrow, and does every way but the right one, and it would seem as if a person with common insight would have done so at first. He said: "Not so," very mildly, "the other way." The servant fumbles about, turning it over and over, and does not get it right. At length Mr. Hawes says: "Leave the room." The servant tries to turn the paper on and get it right once more: "Leave the room, I say," he arose, put the paper on the chair at the first sight. He thanked him as blandly as any woman. Now, concerning his impatience towards me personally. I was helping him to find some little papers, memoranda, or something of the sort. I probably was dull—did not exactly do things by the right handle, and he began to speak irritably, impatiently and disrespectfully. I told him, generally—

MR. BARNES—State what he said, Doctor.

WITNESS—[Continuing.] Well, I don't know as I can repeat his words—they were not addressed to me. He didn't tell me that I was a blockhead or a fool, or anything of that sort; he didn't tell me that I was stupid, but: "Don't you know better than that?" something of that sort, like that. I reminded him that if he would be patient I would do the best I could, and told him that I was there to render him any assistance in my power, and he must treat me respectfully. He calmed down a little, gently and as blandly as could be, and I said nothing, and we went on with our affairs.

MR. PRATT—Q. Doctor, when you told him, in a conversation which you have referred to, that his life and treatment of other people had been such as not to call around him many affectionate friends, did he receive that, and what response did he make to it?

A. I don't think he made any response. He was obliged of course to be economical of his vocal powers, but he accepted it as a matter of consideration.

Q. I asked you once, Doctor, and believe you did not answer the question in full: what was his appreciation of society, as distinguished from individuals? How did he regard society?

MR. BARNES—I object to that question as—the time is precious. Let us come down to issues now. It is irrelevant and immaterial, and not evidence in rebuttal.

THE COURT—I think the question can be asked. It may be immaterial in rebuttal, and have a tendency to show—

MR. BARNES—[Interrupting.] Then I withdraw the objection.

THE WITNESS—He had a great interest in society—in the love of mankind in distinction from the love of individuals. What the philosophers called a solidarity of the mind—and was accustomed to talk about its progress and his belief in its progress. There was nothing which he liked to talk about so much as the growth of society. He believed in it more firmly than he believed in anything else almost.

Q. Did he talk much or often or otherwise, of educational institutions?

A. He talked about his scheme of education. I don't think though he said much about education in general of any sort.

Q. What was his deportment, merely as distinguished from his social disposition—that is, was he nervous, or irritable and impatient, or the reverse?

A. He was very nervous, that is in the common sense of that term; "nervous" is a very indefinite word.

Q. That is true.

A. He was exceedingly impatient of dissent.

Q. What was the estimate or appreciation of the value or uses of money and property?

A. He had a great love of property personally for himself, and he had a very rigid view of its use—of its utility. All extravagance offended him. He was a man brought up in penury and want, himself. He had one of the severest childhoods.

MR. BARNES—You do not know anything about that, Doctor?

A. No, only what he said.

MR. BARNES—Leave that out.

MR. PRATT—Q. Did he, in any of these conversations with you, tell you what the circumstances of his early life, education and habits had been?

A. Yes, sir.

Q. State it to the jury.

MR. BARNES—Does your Honor think that at all material?

THE COURT—I think it may be stated. I cannot say how far these questions are responsive to the case that you have made.

MR. BARNES—If they are at all responsive I have no objection.

MR. PRATT—We will hurry through our rebuttal now, Mr. Barnes, after this.

Q. What account did Mr. Hawes give you of his early life, situation and the struggles, etc., and education? State to the jury specifically as he stated to you.

A. He told me of the place of his birth—I cannot recall the name of the town—in the State of New York; and in his early childhood the family moved on to a new domain or clearing in a forest of which they made a clearing. He was about, say, six years old; they went on to that piece of land—cleared it up; the father and the boys did all the work; the mother was an invalid for years, until she died in the house; their want was exceedingly great—when Mr. Hawes repeated that experience he showed emotion unaccustomed to man. He left home in early boyhood; I should say before he was twelve years old, and all that he had—all that he received that he had not on his person was a pair of stockings. What he did or where he went for a few years, I don't know; but he struggled along and got to New Haven, sometime in his youth, with the intention of going to college, but he was unable to stay there; and in repeating this experience he stated to me, that through this discouragement which he experienced in New Haven, he made a resolution that he had kept all his life; feeling the advantages of education and the want of obtaining it, he said that if he was ever able to acquire property he would endow an institution of education with it. This was the history of his childhood and early manhood, as I got it from him.

Q. Did he tell you, Doctor, when he arrived in California?

A. Well, I cannot tell—I cannot call the date; he was in the city of Mexico at the time of the cession of California.

Q. What relation, intellectually, did Mr. Hawes bear to Mrs. Hawes?

MR. BARNES—Well, I will object to that.

MR. PRATT—What is the ground of objection?



MR. BARNES—Well, in the first place, on the ground most prize in woman is her affection, not intellect; or ground, that it is utterly immaterial in the decision of this immaterial. Is the Court to try this question on the inferences between them? I don't suppose Mrs. Hawes drawn a consolidation bill, or deed of foundation—I ho way. But I really think this is going a good ways.

MR. PRATT—I will merely make the suggestion and ta of the Court. The opposite counsel have harped upon M peated complaints that Mrs. Hawes was his social and in ferior. It is in direct response to this.

MR. BARNES—I have not harped upon it—upon the in feriority. They have had an opportunity of showing Mrs self, and in the description of Dr. Stebbins, I think it opinion, and I do not see how it could help the jury in conclusion one way or the other on this question. I think embarrassing question to put to the witness, too.

MR. PRATT—I have no doubt about that.

THE COURT—[To witness.] Is it an embarrassing ques

THE WITNESS—No, sir; you can't put me any question barrassing.

THE COURT—I will allow the question to be asked.

MR. PRATT—What relations did he bear intellectu Hawes?

A. You mean by that, the comparison of her mind w course he was greatly her superior intellectually.

Q. What was the relation in point of acquirements or

MR. BARNES—I suppose your Honor will allow that q I would like to have an exception to it. I won't take tim

THE COURT—[To Mr. Pratt.] How far do you propose the inquiry, Mr. Pratt?

MR. PRATT—Only to get the answer to this question.

THE COURT—Very well, answer the question.

THE WITNESS—The contrast of their acquirements was the contrast of their endowments.

Q. Doctor, from your personal observation and know Hawes, and intercourse with him, have you an opinion as or insanity?

MR. BARNES—Just answer the question—Yes, or no, I

A. Yes, sir.

Q. What is that opinion?

MR. BARNES—Wait a moment. I object, on the same f fore.

THE COURT—The same ruling as before.

MR. PRATT—The Reporter will note the exception of t

MR. BARNES—Does the executor except to the ruling?

MR. KENNEDY—I did not except to your Honor's rulin instance on that question, and I do not enter an exceptio join in the exception on Wednesday. It was more from any desire to enter an exception; and I am under the in your Honor's ruling is right. I do not wish to enter an

MR. BALDWIN—Perhaps I should state right here the the exception was entered. The Reporter had it, and was entered under all the devisees of the will. I recall

Hart appeared as one of the devisees, but I took broader ground than I ought to have done.

MR. KENNEDY—I did not except.

MR. BALDWIN—Then the exception was too broadly taken. It should be confined to the devisees under the will, whom I represent by appointment or order of the Court. That would not include Mr. Hart.

MR. PRATT—The Reporter then will note the exception of the other counsel.

THE COURT—The executor does not except.

MR. PRATT—No, sir.

*Cross-Examination* by MR. BARNES—Dr. Stebbins, you stated in your examination day before yesterday what Mr. Hawes' views were as to the future of the institution, and his own personal immortality. What did he ever say—earthly immortality, I mean. What did he, if anything, say on that subject of deed foundation or the instrument?

A. He was accustomed to talk about that deed a great deal. He evidently plumed himself upon it. He felt that it was a master-piece of English composition and of legal construction, as a paper setting forth a perpetual and everlasting endowment. He had a conception of it to the extent that every word—to use his own language—"every word has been read and fixed, and a definite and intelligible meaning attached to it." He felt that it was a great production, and that it challenged the study not only of any individual man's mind, but of the human mind.

Q. Did he ever say anything to you further than that in relation to its never, in all the changes of the world, admitting of a change of any kind?

A. I think the deed itself says so.

Q. Well, I know—I am not talking about the deed. I merely want to know what he said about that?

A. I don't recollect clearly of his saying that much to me in that definite and particular way.

Q. How often, if at all, did he ask you as to the extent of study which the Trustees named in the instrument had given to it?

A. He had a good deal of anxiety to know that the Trustees were studying the deed; that is, that they had read it, that they had pondered it, and were getting into a knowledge of it.

Q. Did he ever, and, if so, how often, want you to gather the Trustees together, and advise and have the instrument read?

A. Yes, he did.

Q. How often did he want to get them together there to read that paper?

A. Well, he requested them to come several times within the last thirty days—the last fifteen days of his life.

Q. Did they go?

A. They went once.

Q. What was done?

A. I read the deed in his presence and in the presence of the Trustees, but my duties were such that I could not stay longer, and I left the company that moment.

Q. How many times did he want you to get them together to have that deed read before him and them, do you think? Of course I don't mean to bind you down, you know.

A. That must be a recollection, of course. Well, it been half a dozen times.

Q. Did he ever request you to write a discourse upon deeds, to be delivered after his death, and to come there to him before he died?

A. No.

Q. Did he ever do anything of that kind?

A. He wanted me in association with the Trustees, to unfold in deliberate discourse, the deed of foundation in its provisions, limitations, and restrictions, and to set forth in some manner the funds, progress and development of the in it lay in idea.

Q. Didn't he want you to prepare something in the discourse to be pronounced by you after his death, in relation to the subject, or himself, or both, and to deliver it there in his room, so that he could know what you were going to say on that subject?

A. No, no.

Q. What was it then, that he wanted you to do?

A. It was to unfold the deed of foundation. That is the deed of foundation in discourse there in his room, as an audience—before himself and the Trustees.

Q. He wanted you to go there and deliver an address to them, on the subject of this deed? Is that it? I want to know precisely if I can.

A. I don't know as it was an address, or an oration, in that sense. It would be, perhaps, more in the nature of a statement and an unfolding of the facts, and going forward to build up a new site.

Q. Well, did you do it?

A. No, I did not.

Q. How did you get out of it?

A. By telling him fairly that I could not devote time to it, and that the Trustees, neither could I ask the Trustees to pay for it.

Q. You say that you did not take the Trustees there, and he wanted to have them. Now did he exhibit any displeasure about that?

A. I told him when he asked me to bring the Trustees often—I told him that I could not ask the Trustees to come repeatedly to his bedside. They were men of affairs, had their own, and it was not reasonable to request them to come often for that purpose.

Q. You used a very happy phrase here the other day, distinguishing between personal unkindness and intellectual unkindness, and I understand that to mean that no suggestions of any kind, or way of advice that you threw out to him, made any impression on him, or produced any fruit. Was I correct in that idea?

A. That was not exactly—I think I made the expression "intellectual hospitality."

MR. BARNES—Well, whichever was, it was a very good how.

A. He was not fond of receiving suggestions from others. He felt that he was competent himself, and if you made a suggestion which he resisted to-day, you might find it

beaten in with the bit of his own thought, and he regarded it as his own.

Q. Now when he went East, did you give him any letters of introduction?

A. I did.

Q. To whom?

A. I gave him letters of introduction to President Weed, of the Cornell University.

Q. Andrew?

A. Andrew Weed.

Q. Anybody else?

A. I don't remember that I did.

Q. Now, when he came back, did he say anything about that gentleman, or any others whom he had met there?

A. Yes, he referred to his not having an educational mind.

Q. Yes; what did he say about it?

A. He did not appear to have appreciated very highly anything which he received from them.

Q. Can you state what he said about them?

A. In the interview with Mr. Haven, ex-President of the Michigan University, he said he was induced to make a change in one of his provisions—or by a suggestion made by President Haven. It was not a very important suggestion. It was the reduction of the size of what were called the villa lots — in the property at Redwood.

MR. BARNES—Perhaps you don't understand my question. I will make it a little more specific. Did he say anything to you of their knowledge of education and of their views of it, and of the ways to get at it, as contrasted with his own?

A. I think he did. He said that they did not seem to me to know much about the subject.

Q. Now, I will ask you if Mr. Hawes, from all you saw, thought anybody knew anything about the subject except himself?

A. To answer that question categorically would not be a truthful answer.

Q. I do not want you to make any but a truthful answer.

A. I ask simply, do you wish me to state what I understand to be the fact in regard to his opinion, or do you want a categorical answer?

MR. BARNES—No, I do not.

A. Mr. Hawes doubtless felt and said that he understood this matter better than anybody else; but that he utterly rejected intelligence from abroad, or felt that other people did not know anything about it, would be false.

Q. You spoke of Mr. Hawes' monument upon which was to be his name alone. Who was going to put up that monument, in his mind's eye?

A. The men of future generations.

Q. Where? Here?

A. You mean here in this city?

Q. Yes; thereabouts?

A. Near the foundations of the endowment. That was the understanding. That is, he did not specify that it was to be on this particular hill, or plain, or in this city.

Q. Specify what he said about that monument?

A. I don't remember that I have anything to say beyond what I have said.

Q. Do you remember his ever saying anything to you about a vision that he had?

A. No, sir.

Q. Did he ever tell you anything about a vision that he had that day when he was down there on a hill?

A. No, sir; he never spoke to me of that.

Q. That deed of foundation was not acknowledged, I understand, till after Mr. Hawes' death. Did he ever give you any reason for not wanting it recorded?

A. Yes; he did.

MR. BARNES—It was acknowledged by Mr. Baldwin till after his death, was it not?

MR. BALDWIN—I am unable to tell you precisely the day.

MR. BARNES—It was acknowledged by the subscribing witnesses after his death.

Q. Was there any reason coming from him why that deed was not recorded?

A. In the deed was reserved the right of revocation. He did not want the deed recorded then because he might, at any time, have changed his mind, and was not probable that he should, exercise the right of revocation and change something. He might, though it was not probable that he would, have done so, but he wanted the deed to go on in its final and last form as recorded.

Q. What was Mr. Hawes' opinion of his own abilities?

A. They were very conceited; he had a very extravagant opinion of his own abilities.

Q. Give us an idea of that.

A. An idea by illustration of some other man?

Q. Yes; or by enlargement of that proposition.

A. Well, sir, I have seen a man, a common man; and another man, a common man, I do not speak contemptuously—for we are all men—but I have seen a common grocery-store politician who could fire tobacco juice fifteen feet without scattering, who felt that there was a singular unity between his mind and Edmund Burke's. Mr. Hawes' conceit of his own intelligence was a great conceit. Mr. Hawes' conceit of his own intelligence was perhaps equal to that.

Q. Can you illustrate that by anything in respect to his own work?

A. You mean anything that he did himself that he regarded as his greatest work?

Q. Yes, sir.

A. I think he looked upon the deed of foundation as his greatest work; as a piece of composition in literature; in the clean use of English ———, and in its legislation, I think he felt that it was absolutely great. I mean, absolutely, in reference as to an individual man, and with reference to the human mind itself; and he felt that it was the production of a great human mind.

Q. Did not he regard that work of his as the greatest thing that had ever been done, or composed, or set up for the admiration of mankind?

A. No, I do not think that he had that opinion. I think that he felt that it was absolutely the greatest thing that was ever done by the human mind, but I do think that he felt that it was one of the greatest things ever done.

Q. Well, do you think this view that he had of himself?

to other things besides that; was it specifically directed to that particular thing, or was it generally anything he did?

A. He was accustomed to speak of all things that he had done that were admirable and great; but I think his opinion of himself rather matured in his last.

Q. You spoke of an occasion when you saw Mrs. Hawes go in the room, and went up and kissed him, and he received it; it was given as a ball of putty might be given, and received as a ball of putty might have been received. I ask you if there was anything in his manner or demeanor that was calculated to draw out any demonstration of affection?

A. No; nothing.

Q. Was it not, on the contrary, to repel it and repress it in every way?

A. It was utterly unreciprocal, utterly undemonstrative, and, if you will allow me to make a remark in regard to the suggestion—in regard to the illustration—if you will allow me to make a general remark in regard to this testimony—it is difficult to give it, Mr. Barnes, without a shadow of moral contempt, one way or the other; but I have no such. It is difficult; if you will put yourself on the stand, or in my experience, you will see it is very difficult to state this thing without giving a moral shadow, almost, of contempt on one side or the other. I only wish to say that it pertains to the case; that is all. I meant no disrespect towards anybody, when I made these sensuous illustrations.

Q. Of course; I do not think anybody took it that way.

A. And the same remark, in regard to the question of endowments—that is, intellectual endowments or acquirements.

Q. I asked—I did not get an answer to that branch of it; whether his manner towards her was not always, so far as you saw, repellant in the extreme. You said he exhibited the strongest antipathy for her; and from your remark, one might imagine or draw from it, the inference that her manner in going up to the bedside and kissing him, was blameworthy in some respect, as if she had thrown a ball of putty at him. Did you mean to be understood in that way?

A. No, you asked if his manner was always and extremely repugnant.

Q. Repellant?

A. Repellant. That is a double superlative, and it would not be true to say that it was, because he received food from her, and she was assiduous in such a degree as the circumstances of his condition required.

Q. Well, then, when he was not absolutely repellant of her, was it not entirely indifferent?

A. It was indifferent.

MR. BALDWIN—Q. One further question. You stated that Mr. Hawes told you his provisions to those dependent upon him were ample, or language to that effect?

A. Yes, sir.

Q. I wish to ask you simply, did he ever state to you what they were specifically?

A. No, he did not.

H. D. LATHROP, called for Executors. Sworn.

Examined by MR. PRATT—Q. How long have you resided in San Francisco?



A. About four years.

Q. What is your profession?

A. I am a clergyman of the Episcopal church.

Q. Did you know the late Horace Hawes in his lifetime?

A. Slightly.

Q. What was the extent of your acquaintance or intercourse with him, and when did it occur?

A. I called on him eight times. I called at the house four times during last January, twice in February, and twice in March. Only twice, or maybe three times, I did not see him; and about five times, and each time about thirty or forty minutes.

Q. What was the subject of conversation during these calls?

A. Well, sir, that was various. I always endeavored to get his mind to the subject of religion, and talked with him on that subject. It did not always succeed. But I often did in doing it, but the conversation took a wide range.

Q. What conversation occurred between you on the subject of religion?

A. Well, sir, I cannot remember very precisely. I ascertained from him what his faith was, and endeavored to persuade him to feel and think and do as I thought he ought.

Q. What response did he make?

A. Well the first point, sir, which I wished to ascertain was his belief in the divinity of our Lord, and I found, upon conversation with him, that is I thought his view was correct upon that subject. We talked about that a good deal. I believe—is it correct to state what I had heard with reference to his prior religious views?

MR. PRATT—If there is no objection.

MR. BARNES—Never mind what you heard, we have all heard it. I had a good deal to do here, and you will just call on yourself, now, to what you saw and said.

WITNESS—Yes, sir. Well, I must say this: I think, so much as I understood—

MR. BARNES [Interrupting]—Never mind, now, we don't want to give what you understood, but just state what took place. Just state the whole story from one and another. Just state what he said and what you said.

MR. PRATT—Q. Let me ask you did you state to Mr. Pratt what you had heard and understood?

A. Yes, sir.

MR. BARNES—Give your conversation with him.

A. I cannot give my experience with him exactly, by and by. I paid no attention to them at the time particularly, and it is a mere general recollection.

THE COURT—The substance of the conversation as near as you can come.

A. Well, having ascertained this point I endeavored to get him to receive the communion.

MR. PRATT—Q. Did he do so?

A. He did not, sir.

Q. Were there any religious exercises of any character which he joined in?

A. Prayers, often; at least several times; and reading of scriptures.

Q. What was his usual manner when discussing the subject of religion—talking on this subject?

A. O, not different, sir, from that of every man; nothing especial in any way.

Q. Did he talk to you in any of these conversations, of his children, or family or wife?

A. He spoke of his son, sir, I know.

Q. In what manner?

A. Well, affectionately, so far as I remember, and more particularly with reference to the idea that he did not wish to leave him a large amount of money to spend, or at least, the control of a large amount of money, until he reached maturity, or something about like that.

Q. Did he assign any reason?

A. None that I can recollect, sir, except the general reason, that it was not well to give young men a great deal of money.

Q. What was his manner while talking on that subject?

A. Do you mean, sir, with reference to excitement?

Q. Yes, sir.

A. Perfectly cool and composed, so far as I saw, sir. I never thought of anything with reference to it.

Q. Did he ever detail to you any of his family or domestic troubles?

A. None, whatever, sir.

Q. Was there ever any conversation in regard to his wife with you, on any allusion?

A. I don't think there was, sir. I don't remember that her name was ever mentioned.

Q. Did he ever say much to you of the university which he proposed to found?

A. O, he spoke of it, sir, several times. You will remember, sir, I said my interviews were short and not very numerous.

Q. Did he ask you to make any suggestion, or give any advice with reference to it?

A. He gave me this deed of foundation, and asked me to look over it and to make any suggestion I wished to, impressing upon me the importance of examining it very carefully.

Q. Did you see Mrs. Hawes in his presence when you were there?

A. I think I must have done so, sir; but I really cannot recall any particular instance. I saw him in the anteroom frequently, and, I think, she was in and out of the room in which we were.

Q. Was there anything in his manner or language towards her which attracted your attention?

A. Nothing, sir.

MR. BARNES—He says he does not know that he ever saw her there at all.

MR. PRATT—He says he thinks he must have.

THE WITNESS—That is an inference rather than anything else.

MR. PRATT—Did you see any other persons frequently in his presence?

A. No, sir; I cannot say that I did. Frequently I saw persons there. I remember Mrs. Ober being there upon one occasion, one or two, perhaps, and the nurse was in the room; but generally, I think, when

persons were there who were there when I went in, the room.

Q. What was his general manner and conduct toward who did come into his presence when you were there?

A. I saw nothing peculiar, sir.

Q. Did he transact any business during your interview parties?

A. I do not think he did, sir; I do not remember anything.

Q. How did other people who came into his presence did you treat him, deal with him?

MR. BARNES—Hold on. I object to that. State what was said.

THE COURT—I think that is the way to confine it.

MR. PRATT—Then state, Doctor, what was said by other came there while you were there?

A. I do not remember, sir, of anything said or done else, except perhaps Mrs. Ober would converse a little on a conversation between us. I only remember positively her and the nurse, upon two or three occasions, and the nurse.

Q. Was there anything then in these interviews or transactions in the manner of any of the parties or otherwise, that attracted attention?

A. Nothing, sir.

Q. I will ask you now, Doctor, if from your personal knowledge of Mr. Hawes you have an opinion as to his insanity?

MR. BARNES—Answer the question "yes" or "no."

A. You mean from my own personal knowledge of Mr. dependent of this trial or anything connected with it?

Q. Yes, sir?

A. I have, sir.

MR. PRATT—I will consider the other question asked, with ruling and the same exception.

*Cross-Examination by MR. BARNES*—Q. How did you come there?

A. I was asked to go there by Mrs. Ober, or she said that she had spoken to Mr. Hawes, and he had expressed—sure whether it was a desire or simple consent to my coming, think, though, a desire to see me.

THOMAS D. MATHEWSON, called for the executor. Sworn.

*Examined by MR. PRATT*—Q. How long have you resided in Francisco?

A. I came here in 1849—September. I have resided in time since that time here—perhaps two or three years, with three years.

Q. When did you first become acquainted with Mr. Hawes?

A. I think in 1856.

Q. What was the extent of that acquaintance or intimacy; how long did it continue?

A. Well, I have always known him since that time; nearly friendly, or otherwise. We always conversed together about different things generally when we met each other. I first

him at that time, when I got more particularly acquainted with him, to examine title to some land; and after that time, why we used to talk together, as people generally do in that way.

Q. Was that in 1856?

A. In 1856; yes, sir.

Q. Up to what time did this acquaintance and intercourse continue?

A. I never went to his house to see him when he was ill. A short time before he died, the last time I remember of seeing him, riding in a carriage, I think in front of the Merchants' Exchange, about the middle of the day, a little while before he died. I do not remember exactly the time. I was speaking to him then. That was, I think, the last time.

Q. Did you have any conversation with him then?

A. Just a few words. I asked him simply how he was feeling, and so on; nothing especial; only as one person would speak to another.

Q. I suppose he never—did he ever inform you of his domestic troubles?

A. I never knew his family. He spoke about his boy. I knew his boy.

Q. In what manner did he speak of his son?

A. He thought he was considerable of a boy. I remember at my office on Montgomery street one day he had him there, and was talking about him, and I remarked he looked like him, and so on; and he spoke of him as any father would of his son?

Q. Did he ever speak to you on the subject of endowing any public institution?

A. I think quite early he had some kind of an idea of getting up some kind of a school. If I remember, somewhere as early as 1857 or 1858, perhaps, he had an idea that all persons should have a trade, and that persons who could not well get it otherwise—there should be an institution established to learn them trades and educate them at the same time—something of that kind. I think it was about as early as 1858 he spoke of it. I do not think it was definite.

Q. Did he ever speak to you of it on more than one occasion?

A. He might have remarked it. We would be talking of one thing and another, and I could not state definitely about that. It is a long time ago, and I had no particular reason to remember about it.

Q. Did he ever talk to you on the subject or as to the propriety or policy of leaving large fortunes to children?

A. He did not think boys ought to have much money.

Q. How early did he express that view to you?

A. Sir?

Q. How early did he express that view to you?

MR. BATES—State what he said, if you can, sir.

A. He spoke about his boy or boys generally. He thought if they had money to use too freely, that it was apt to injure them. He did not think it made as good men of them; they were apt to become more or less spendthrifts, and expressed himself something in that way.

MR. PRATT—Q. When was that, Mr. Mathewson, about when, the first conversation on this subject?

A. I could not tell within two or three years; a few years ago. I could not state when it was.

Q. A few years ago?

A. Yes, sir.

Q. Probably five years or ten?

A. No, not so much as ten.

MR. BARNES—Oh! well, any time. Go on.

A. Two or three or four years ago, perhaps. I could not state definitely. I did not think it was material.

MR. BARNES—I will admit it annually, ten years, once a year.

MR. PRATT—I would like to have you state as near as you can what he did say upon founding public institutions.

A. That was a long time ago, and I could not recollect his words. As people get together and get to talking about different things, why, it made so little impression, it was a good while ago, that I could not recall the conversation.

[No cross-examination.]

WILLIAM A. PIPER called for Executor. Sworn.

*Examined* by MR. PRATT—Q. How long have you resided in San Francisco?

A. Twenty-two years.

Q. When did you first become acquainted with Mr. Hawes?

A. I think in the latter part of 1854.

Q. Did he ever speak to you on the subject of founding any public institution?

A. I think he did, sir.

Q. At what time first?

A. Well, that I could not tell. It is just general conversation.

Q. About what time?

A. Well, say 1855, or '56 or '57 probably.

Q. What views did he express on that subject? What did he say on the subject?

A. I could not tell, sir; general conversation about such things.

Q. Did he ever speak to you of the propriety or policy of leaving fortunes to children?

A. Yes, I think he has.

Q. What did he say on that subject?

A. His idea was that it did them harm, if they were left fortunes; it made them profligates and spendthrifts, and so forth; that was the general idea he expressed.

Q. When was that conversation?

A. Before his marriage.

Q. Was the conversation on the subject of public institutions—did any of these conversations take place before his marriage?

A. All of these conversations.

[No cross-examination.]

HORACE DAVIS, called for Executor. Sworn.

*Examined* by MR. BALDWIN—Q. How long have you resided in California?

A. About nineteen years, sir.

Q. What is your business?

A. Miller.

Q. Did you know Horace Hawes in his lifetime?

A. I knew him; that is, the latter part of his life.

Q. About when did you first form his acquaintance?

A. I first met him personally, became personally acquainted with him, I think, on the 22d of February last.

Q. What business had you with him then, if any?

A. He sent for me to take charge of some wheat or grain that he desired or wanted to sell. He wished me to have it sacked and forwarded to town and disposed of.

Q. Where did you meet him?

A. I met him at his house.

Q. Where?

A. On Folsom street and Tenth, I think it is.

Q. On Folsom and Tenth?

A. Yes, sir.

Q. State the circumstances of your first meeting, briefly.

A. I went out there on the 22d of February—I remember it from its being a holiday—and Mr. Hawes, if I remember correctly, was in bed. He stated to me what the object of his sending for me was. He wanted me to take charge of this grain which was on his Redwood farm, have it sacked and sent up to town. I told him it was not my business; but he said he would like to have me take charge of it. I told him, very well, if it was any satisfaction to him, that I would do it. I took charge—do you want merely the intercourse with him, or for me to finish the transaction?

Q. The transaction is of no importance outside of its immediate connection with him.

A. He gave me an order on his agent down there for the property, specified to me the manner in which he wanted it forwarded to town, and exactly what he wanted done. I got the grain in, and he would not allow me to—

Q. So far as what you did outside, it is a matter of no importance?

MR. BARNES—No matter. Go on.

A. He would not allow me to send the grain by rail, but insisted upon my sending it by schooner, and the grain did not reach—the last of it—until immediately after his death; and therefore the transaction was finally closed with his executor.

MR. BARNES—Administrator?

A. Administrator.

MR. BALDWIN—When did you next see him after this first meeting?

A. On the twenty-fourth of February, a couple of days after this, Friday.

Q. And how many days from then up to the twelfth of March, the date of his death?

A. I think I met him on the twenty-fourth of February, which was the date of the signing of the Mont Eagle deed. I met him on the sixth of March, which was a Monday—on the sixth of March I met him—I was out there with the other trustees of Mont Eagle.

Q. During the day?

A. Yes, sir. On the seventh of March he sent for me and asked me to go and spend the evening with him. I went out. I was dining with Mr. Otis. I went out with Thomas Otis and spent the evening, and was there till ten o'clock; if I remember right, that was the Tuesday before his death. On the Friday before his death I sat up the night with him, watched with him. He was then very sick.

Q. Is that the extent of your personal intimacy with him?

A. That is about the sum and substance of it; yes, sir. I was there on one other occasion, but I do not think I spoke to Mr. Hawes.



Q. Then on the seventh—was it the seventh you visited him in the evening, or that you stayed up with him?

A. On the seventh I visited him in the evening, and I sat up with him.

Q. How long were you with him on the evening of the seventh?

A. I could not tell you exactly. I dined with Mr. Otis, and he asked him to go there with me. I received a note from Mr. Otis at five o'clock, directing me to come down there; he would be there and talk to me. I was going there after dinner, and I asked him if he would go down with me. So we went down at seven o'clock, and until ten, I think. Mr. Otis stayed there all night.

Q. What was the topic or topics of conversation, if you remember?

A. Well, he talked more about the prospects of his University than anything else; I don't remember the exact conversation.

Q. Well, do you recall any other topics of conversation? Was his physical condition at that time?

A. He was bad. He was quite sick.

MR. BARNES—It is admitted he was sick.

MR. BALDWIN—How did he speak?

A. The only particular topic I remember was in connection with that. He spoke of having made, as he expressed it, arrangements for his family, for he did not care about leaving large wealth to his child; that he did not think it was any advantage to him in connection with the University he spoke of that.

Q. I wish now to know how he spoke; that is, with regard to his voice or otherwise. Did he speak slowly or rapidly?

A. Very slowly: he was quite feeble; with great distinctness, quite slowly and with considerable interval between the words.

Q. And with considerable time between the intervals. Did he speak distinctly as you can as to time?

A. It would be very difficult to do that.

MR. BARNES—We have got it; he spoke slowly and with considerable interval between the words.

MR. BALDWIN—You say he spoke very slowly?

A. Quite slowly and quite distinctly.

Q. Doctor, in all your interviews with him, were you always there, and if so, who were they?

A. Yes; the first time that I went there on Wednesday, Doctor Stebbins was there, and during a part of the interview a little boy Tommy, as he was called, was in the room, and on Wednesday, Mrs. Hawes came in the room to bring her impression is, to bring some writing materials; I am not sure of that. On Friday, the trustees of the Mont Eagle gift were there. Monday again, the next I was there, they were there. On Wednesday, as I said, Mr. Otis was there, and Mrs. Hawes was in the room that night that I watched with him, Mrs. Hawes was there; Mr. Otis stayed with me until twelve o'clock, midnight, and Mr. Otis was there. He and I watched turn about until daylight.

Q. How often did you see Mrs. Hawes with him during your interview?

A. The night that I watched there she was in the room, but not much at the other times—somewhat.

Q. What was his manner towards Mrs. Hawes when she was there? Did you observe anything unusual, I will ask the witness?

A. No, sir.

MR. BARNES—State what you saw.

MR. BALDWIN—That is the object of the question; to bring that out.

A. State what I saw?

MR. BALDWIN—As between them?

A. Well, there was no particular mark of affection between them. There was nothing peculiar in their demeanor in any respect that I know of.

Q. Do you recollect any conversation between them?

A. No, sir; she brought him in something to eat, and she came in to take care of him when he required care—personal operations.

MR. BARNES—Q. What?

A. I say she came in to help take care of him during his operations during the night. He was quite sick.

MR. BALDWIN—Q. Do you recall any conversations that were had?

A. That night?

Q. Yes.

A. There was not much conversation. He was quite weak that night. It appeared to fatigue him to converse much, and I did not attempt to converse with him. My object in going there, merely was to sit up with him, to take care of him.

Q. This was in the night you now speak of?

A. Yes, sir.

Q. On the evening of the seventh, was she there while you and Mr. Otis were there?

A. I think she was; I am quite sure she was.

Q. Did you and Mr. Otis go away together?

MR. BARNES—He has already stated that he thinks that Mr. Otis remained and sat up with him all night.

THE WITNESS—Yes, sir, I think so.

MR. BALDWIN—What was Mr. Hawes' manner towards you during your acquaintance with him?

A. Well, he was a little impatient about the grain, because I did not get it quick enough, but otherwise than that his manner was respectful towards me, and nothing peculiar that I know of.

Q. What was it towards others, that you observed in his presence, while there?

A. I saw nothing. He was an irritable man; otherwise than that, nothing peculiar.

Q. Did you ever have any occasion to observe any circumstances of irritability?

A. Yes, sir. He was impatient at times, if things did not go to suit him.

Q. Were there any nurses or waiters there about him at all, while you were there?

A. Well, the boy Tommy was in and out of the room repeatedly.

Q. Any nurses?

A. No, I think not. There were nurses about the room, but then I did not see them in his room much, if any, as I said the night that I watched with him. Mrs. Hawes took care of him with me, that when I wanted anything, I called her. She was in the next room.

Q. I want to call your attention now to the topics of conversation, and what he said, so far as your memory goes. The first conversation you have given materially.

A. The topics of conversation—

Q. In which he engaged. The conversation in which part.

A. The conversation the first time as I said, was exclusively subject of this grain. It was purely a business transaction. The second conversation was the time when the Trustees, gentlemen who had selected as Trustees for the Mont Eagle gift, went out for delivery of the deed, and the conversation was entirely upon that subject.

Q. Did you meet him subsequently upon the subject of the deed?

A. Yes, sir; that was the object of our going out there on the sixth of March.

Q. Can you recall anything that he said on that occasion, can, state it?

A. I do not recall anything in particular that could be stated on that day especially.

Q. Passing the first time; do you recollect anything that he said then, during your interviews with him? Do you recollect anything that he said about the University?

A. Well I had—I was present at a great deal of conversation with him respecting the University; but it is very hard to do it now.

Q. You don't recollect what he said about it?

A. No, I do not. He was very sanguine with respect to the success of it. I remember that.

Q. Well?

A. It is hard for me to give his own language.

Q. Anything further than that, that you can recall?

A. He told me this, I can remember. He said that for many years he had been thinking of it, and that his own experience of life was very hard, and that he wanted to make it so that if he was situated as he was would be able to gain an education without the struggle that he was obliged to go through.

Q. Do you recall anything further?

A. I do not recall now anything particularly.

Q. From your acquaintance and association with Mr. Barnes during this period—this question you are to answer only by "yes" or "no"—did you form an opinion about the condition of his mind?

A. I did.

Q. The next question you are not to answer unless I give you permission. What is that opinion?

MR. BARNES—I object on the same grounds as heretofore.  
THE COURT—The same ruling.

MR. BALDWIN—The same exception.  
[No cross-examination.]

J. C. BATES called for Executor, sworn.

Examined by MR. PRATT—Q. How long have you resided in San Francisco?

A. Since 1866.

Q. You are an attorney-at-law, I believe?

A. Yes, sir.

Q. When did you first become acquainted with Mr. Hawes?

A. I think it was in 1864 or 1865; I don't recollect distinctly the year; as early as 1865, certainly.

Q. Where did you become acquainted with him?

A. At Redwood City.

Q. What was the extent of your acquaintance and intercourse with Mr. Hawes?

A. Well from July, 1866, until the time of his death, I was quite intimately connected with him. While he was in the city I was a great deal of the time with him.

Q. Were you ever in his employ in any capacity?

A. Yes, sir.

Q. When?

A. It first commenced in July, 1866, and from that, with an interval of a few months, until the time of his death, I was in his employ in one capacity and another; part of the time as his agent—the greater part of the time.

Q. What were your business relations to him at the time of his death?

A. He had some law suits, and I was employed for the purpose of looking after those, and looking after his property, as far as street assessments were concerned, and to examine the records every month, and see if there were any "collusive suits" commenced, to use his own language,

Q. How often did you see him during the last two months of his sickness, of his life?

A. Well, sir, I could not state. The last two or three weeks before he died I saw him quite frequently, but before that I only went to see him when it was absolutely necessary on business; two or three weeks before he died I staid with him and sat up with him all night—I think it was Sunday night, or about the first of March, and one night, or part of the night.

Q. Up to what time did Mr. Hawes continue to transact business?

MR. BARNES—That assumes that he did. Now, let us know what the business was—whether he did transact any; that assumes a fact that is not proved. The question is objectionable on that account.

MR. PRATT—Q. Did he transact any business during the last month of his life?

A. Not much that I know of, sir.

Q. Did you know of his transacting any?

A. Well, I know from what I heard—the testimony in Court.

Q. Do you know from your own conversation and experience, of his transacting any business during the last month of his life.

A. Well, in the month of March, I think, February or March, there were a few rents to collect, and I wrote out the receipts, I think, and he signed them. I recollect in March, the first of March, he wanted me to sign his name and I objected to it, and sent out the receipt for him to sign his own name. One man paid me a check, and I sent my clerk out there to have him indorse the check, and he didn't seem to know at first what he was about; but at last he indorsed it, and sent it back, and I collected the money. That was about all; I don't know any other business he had except collecting a few rents.

Q. What were your relations to Mr. Hawes—business relations—during his absence in Europe?

A. Well, I had charge of all his affairs here in the city; as far as his property is concerned in the city, and attended to all of his—he had some lawsuits, some in the Supreme Court—I looked after those.

Q. Do you know what was the condition of Redwood Farm at that time?

A. Well, I have a general idea, sir; I was out there several times. It was rented out to tenants.

Q. To different tenants?

A. Yes, sir.

Q. Rented out in parcels?

A. Yes, sir.

Q. Was the entire farm rented out?

A. Well, I think there was a small portion there where his homestead was, a few acres there were reserved.

Q. About how much.

A. I believe it is ten acres; about that; that is my impression.

Q. Where did Mrs. Hawes reside during his absence to Europe?

A. Well, sir, after he went away she stopped here in the city; at those rooms on Folsom street, for a few months.

MR. BARNES—You mean the house on Folsom street?

A. Yes, sir; we always call them rooms, which is a reserved part.

MR. PRATT—Q. How long did she stop there?

A. I think, sir—it is my impression—I think she came in in November and remained there until February; some time, I think, in February she went to the ranch.

Q. November, 1869?

A. November, 1869.

MR. PRATT—Q. When did he go to Europe?

A. He left here the twenty-fifth of September, 1869.

Q. He came to the house on Folsom street November following?

A. I think the last of October or first of November; my recollection is, the first of November.

Q. And remained there until when?

A. I think in the month of February she left and went to the ranch.

Q. Did she remain there then until his return?

A. At the ranch, yes.

Q. Now, what was the condition of the house on Folsom street, when Mr. Hawes left for Europe?

A. When Mr. Hawes was in Europe his cousin was there quite sick. He was in the house; the three rooms were furnished up; a library and furniture in one, and a bed, I believe; very little furniture there.

Q. Was there any occupant or tenant in the house?

A. Yes, sir; in the main part of the house, sir. Captain Bluxome, I think.

Q. Was that Mr. Hawes' residence, or was it simply his office and rooms? Where was the residence of Mr. Hawes, ordinarily?

A. Well, sir, it was—sometimes when he came to the city he would generally stop there; sometimes at the Nucleus Hotel.

Q. The house on Folsom street was generally rented out?

A. The main part of the house; yes, sir, ever since 1866.

Q. Mr. Hawes' home was at Redwood?

A. I can state just as it is. He would stay down at Redwood City and then come here and stay a few weeks and then go back to Redwood. His family stayed at Redwood most of the time.

Q. He merely had some rooms at this house where he stopped when he was in the city?

A. Yes, rooms were reserved.

Q. What rooms were they?

A. Three rooms, the western ell at the southwestern part of the house.

Q. What were these rooms?

A. The first room you enter was his office, where the library and safe and books were. You go into that or out of that room into the other room, was where he had it used for a sitting room, and during his last sickness he used it for his sleeping room, or where his bed was—that was a bedroom and then there was a bath room.

Q. Then the house on Folsom street, so far as Mr. Hawes was concerned, was merely his private office, and sleeping apartment and bath room; the remainder of the house being rented?

A. Yes, sir; this part was not rented. There were a couple of rooms over this; there is where he had some things stored away that the tenants did not use, a few things.

Q. What revenue or income did Mrs. Hawes have during his absence, besides the one hundred dollars a month you paid her?

A. I am sure I cannot tell.

Q. You don't know of any other?

A. No, I heard that she got a little over, but I don't know of my own knowledge.

Q. Was there any stock on this reserved portion of the ranch?

A. Live stock?

Q. Yes, sir.

A. I believe there was a cow, and I believe there were some horses. Wait a moment; well, sir, I am not sure as to that. I recollect he sent directions in regard to the use of the horses, to prohibit Mrs. Hawes from using them, but whether that was all, I do not know.

Q. Do you recollect whether there was any poultry there or not?

A. I think there were chickens.

Q. A cow and some poultry. Who opened the safe at Mr. Hawes' office after his death?

MR. BARNES—I object, on the ground that it is irrelevant and immaterial.

THE COURT—What is the object of the testimony, Mr. Pratt?

MR. PRATT—I propose to ask him, then, whether he examined the papers and private correspondence, and whether they were all delivered to the executor.

THE COURT—Ask the executor.

MR. PRATT—The executor does not know.

MR. BARNES—They never were; but it does not make any difference whether they were or not; it is irrelevant.

THE COURT—If anybody has any, there is an especial provision for the executor to get those papers. I do not see the relevancy of that testimony.

MR. PRATT—When did Mrs. Hawes first advise with you about contesting this will?

MR. BARNES—I object to that as irrelevant and immaterial.

THE COURT—I sustain your objection.

MR. PRATT—The Reporter will note an exception to the ruling of the Court.

Q. You have heard something said about a row which took place at Redwood about the sale of some grain. Were you present on that occasion?

A. I was present down there when there was some kind of a row



with Livingstone, but it was nothing about grain; grain was not mentioned; it was about another matter.

Q. Is that the only occasion?

A. The only occasion when I was there.

MR. BARNES—Do I understand you to say Mr. Bartlett was taken in his account of the affair at that time?

A. At the time I was there, grain was not mentioned; not about any grain whatever.

MR. PRATT—Do you recollect of seeing Mr. Bartlett there?

A. Oh, yes; I am positive of that.

Q. What date was that?

A. About the 7th of August, I think.

Q. Were you there, Mr. Bates, about the 17th or about the 18th of August?

A. I think not. I do not recollect being there at that time.

Q. Was Mr. Hawes ever impatient with you, or rude, or angry in any way about the transaction of business, or anything else?

A. Once he commenced talking—that was in 1867—he commenced to abuse me a little, and I told him if I did not suit him, he had better get somebody else. He said I did not. I told him that was all.

Q. You say he commenced to abuse you—in what manner? What did he say, and what was the manner, or what did he do?

A. At the time he was making this fight for Senator, on his hook, he wanted me to go down to see some editor of a paper. I went and did the errand as well as I could, but it was not satisfactory to him; however, that is, he began to ask lots of questions when I came back which did not seem to me as material, and I did not give him an answer; then he said one word—I forget what that was—and I replied to him, if I didn't suit him he had better get somebody else.

Q. Was that the only occasion during the intercourse with him on which he was impatient or abused you.

A. He would be a little impatient, but that was the only time he ever undertook to abuse me at my face. I am aware of times, at other times, back, where I have caught it hot and heavy.

Q. How often did that occur?

A. Mr. Putman told me of it, but I could not tell, I was only informed of it once.

Q. How was the house on Redwood Farm kept during Mr. Hawes' absence—that is to say, was there any one there besides Mrs. Hawes?

A. Well, I think she had some of her friends with her, that is all that I know of.

Q. The superintendent of the farm then, did not reside there?

A. No; he lived in the house near by.

Q. There was no occupant of these premises then, except Mrs. Hawes and such friends as she—

A. [Interrupting]—I think Mrs. Hawes had a servant, and there was a man employed by Chas. Livingstone, the "agent and cashier," as we called him, to do some work; he, I think, boarded with Mrs. Hawes.

Q. What work was he employed to do?

A. Well—

Q. [Interrupting]—Did he have charge of the place?

A. Well, the water had made or cut some ditches in the ranch. Mr. Hawes was very desirous of having those filled in with straw or something that was on the ranch, and he was to do this filling.

of the ditches, what time he got, and to keep a look-out and see that the fences were up, and so forth.

Q. Do you know how much that man paid Mrs. Hawes for his board?

A. No; I do not, sir.

Q. Did she ever inform you?

MR. BARNES—Well, I object.

A. I do not recollect whether she ever did or not.

*Cross-Examination by MR. BARNES*—Q. You were asked with reference to the house down there at Redwood City. Do you know whether Mrs. Hawes was restricted to the use of any particular room down there by Mr. Hawes?

A. Well, at one time I believe she was.

Q. When was that?

A. I think that was after he returned from Europe.

Q. What was that?

A. What room?

Q. Yes?

A. Well, it was one of those rooms down there, one of those little rooms there that I could not very well describe, what particular room it was.

Q. Did he restrict her to the use of one room?

A. That is what I understood, sir.

Q. Personally did you know anything of it?

A. Only what he told me.

Q. What who told you, Mr. Bates?

A. Mr. Hawes.

MR. BARNES—What did he tell you?

A. He said he was going to allow her one room, or something of that kind, for a while. I do not recollect distinctly excepting that.

Q. Do you recollect any restrictions he put on her and the little girl as to the amount of milk they might have to drink?

A. No, sir; not to my knowledge; only from hearsay, sir. I heard about that at the time.

Q. Who told you?

MR. BARTLETT—We object.

MR. BARNES—I want to know who told you?

A. I think Mrs. Hawes told me that, sir.

Q. Didn't you see it in Mr. Monroe's book?

A. Well, there is so many things in that book, I don't know; it is my impression I did.

Q. Do you know what the direction was in that book?

MR. PRATT—If the Court please, we object.

MR. BARNES—Well, if you object, all right.

[Here the Court takes a recess till two o'clock.]

#### AFTERNOON.

T. G. PHELPS, called for Executor. Sworn.

*Examined by MR. PRATT*—Q. How long have you resided in California?

A. Twenty-two years.

Q. What is your business or profession at the present time?

A. I am at present Collector of the Port.

Q. Were you acquainted with Horace Hawes in his lifetime?

A. Yes, sir.

Q. What was the extent and degree of that acquaintance—did it commence?

A. I became personally acquainted with him in the fall of 1856, and it extended up to nearly the time of his death.

Q. To what extent of intimacy, or what was the degree of intercourse and acquaintance with him? What were your personal relations to him?

A. We were friendly. I saw a good deal of him after the 1856.

Q. Were you ever neighbors—lived near together?

A. Yes, sir.

Q. Accustomed to visit his home?

A. Not often. I have on several occasions; but not often.

Q. How many times did you see him during his sickness—the last two months of his life?

A. I do not think I saw him within two or three months death.

Q. Did Mr. Hawes ever have any conversation with you subject of endowing some public institution?

A. Yes, he did.

Q. When did the first conversation take place on that subject—what was it?

A. I think it was in the winter of 1856-7. He told me he intended to endow an educational institution, but gave me no particular idea as to what it should be.

Q. Did he tell you how long he had entertained that opinion, or when he had formed it?

A. I do not remember that he did.

Q. With reference to his marriage; was that before or after his marriage that he first spoke of it?

A. I think it was before.

Q. Was that the only conversation you ever had with him subject?

A. No, sir; I have had several, but he never submitted to any definite plans.

Q. How did the first conversation on that subject arise?—did it take place first?

A. I think it was in Sacramento. I was with him considerable time in the winter of 1856-7 at Sacramento. I think it was at Sacramento that I had the first conversation in regard to it.

Q. What was Mr. Hawes doing in Sacramento that winter?

A. I do not know that he had any particular business there, but he felt a general interest in matters of legislation. We frequently conversed on those matters.

Q. Do you recollect how the conversation arose, or who introduced the subject?

A. He introduced it. I do not remember now particular circumstances under which it was introduced. We had a great many conversations on a great many subjects—that among others.

Q. You say he spoke to you frequently afterwards on the subject. Did he always introduce the subject himself?

A. Yes, sir.

Q. State what general views he usually expressed in those conversations upon the subject?

A. The general view was that he was going to found a great educational institution.

Q. Did he ever express to you his views on the propriety or policy of leaving large fortunes to children?

A. No, sir.

Q. Did he ever talk with you about his domestic troubles or family difficulties?

A. No, sir; I do not remember that he ever did, at all.

Q. Was there anything in the general life, conduct, and character and habits of mind of Mr. Hawes that distinguished him from ordinary men?

A. I think there was a great deal peculiar to himself.

Q. Just state to the Court, in your own way, wherein he differed—what his peculiarities were?

A. He was a very nervous, excitable man—a man of decided opinions; did not tamely submit to contradiction about questioning his opinions; a man of some penuriousness, I should say, in his habits—in his personal expenditures; a man in other respects very generous. It is hard to reconcile his penuriousness on the one hand with his generosity on the other. That was a distinguishing characteristic of his, I regard. He was a man very precise in his business. I think he generally, as far as I know, had written contracts for small things, which was rather unusual. He was very precise in his business.

Q. You said that he was generous in some things. What direction did his generosity usually take?

A. So far as they have come under my observation, he has given to schools and churches quite liberally; and on several occasions, entertained school children at his place at Redwood. They must have been at some cost, and some trouble?

Q. What was his temper?

A. I should say it was very quick.

Q. Well, was it always violent when aroused, or ordinarily?

A. I never saw him when he was very violent.

Q. What was his general conduct with, and treatment of other people with whom he came in contact?

A. He was as I have said—he got nervous and excited in any dispute that might arise between himself and another.

Q. Was that uniformly characteristic with him, or did he treat different classes of people in a different manner?

A. I think it was very general that he showed some irritability, when his views were brought in question?

Q. How did Mr. Hawes rank, in your judgment, intellectually?

MR. BARNES—I object to that, as irrelevant and immaterial. It is not shown that the witness is an expert. We have had one very charming discourse on the subject from Mr. Stebbins; but I really think the witness has not been shown to be an expert on a man's intellectual qualifications, not meaning by that to impugn the Collector at all.

THE COURT—I overrule the objection.

THE WITNESS—I regarded him as a very able man, intellectually.

MR. PRATT—Q. When did you first observe these peculiarities or characteristics?

A. Very nearly as soon as I became acquainted with him.

Q. Did you ever observe any material change in him in respects?

A. I thought as his sickness wore upon him, he grew irascible.

Q. Was that the only change you observed?

A. I think so.

Q. Were you in the habit, or did you often, see him in presence of his family, or of his wife?

A. Not often. Not at all, for two or three years.

Q. How is that?

A. I never did often, and not at all, I think, for two years; I have seen him with his children, but not with his wife.

Q. What was his conduct towards the children, and how did you speak of them?

A. He always spoke very affectionately of them to me in private.

Q. How long were you and Mr. Hawes living in the same neighborhood?

A. I think some ten or eleven years. We have both been there somewhat.

Q. Whereabouts were you neighbors?

A. In Redwood City, San Mateo County.

*Cross-Examination by Mr. BARNES*—Q. Did you ever have any moneyed transactions yourself with Mr. Hawes?

A. Moneyed transactions?

Q. Yes?

A. No; I do not remember that I ever had any at all. I do not remember that I ever had a moneyed transaction with him.

Q. During the last ten years how much have you been absent from the State?

A. Probably one year altogether; I have been absent several times for three or four months—five months.

Q. During the last ten years?

A. Yes, sir.

Q. Were you ever at Washington?

A. Yes, sir.

Q. What year was that?

A. 1861 and '62, and 1862 and '63.

Q. Very well; were you in Congress?

A. Yes, sir.

Q. How much of that time were you away from here?

A. I think I was absent the first season about seven months; at the last, seven and a half—yes, I was absent from the State. I was absent from the State four and a half months the last season.

Q. Are those the only times you have been away?

A. I was away last year for two months, and one other time away, I think, out of the State, for two or three months. Those are the only absences I recollect.

Q. Altogether you were absent about a year and a half?

A. Probably; about a year and a half.

Q. Were Mr. Hawes' family and yours on terms of social intimacy?

A. No, sir.

Q. You said you were on terms of social intimacy—you know I mean—visiting as friends?

A. With Mr. Hawes?

Q. Yes?

A. Yes, sir; we were on terms of social intimacy.

Q. He visited your house?

A. Occasionally, not often.

Q. How often during the last ten years has he been at your house?

A. I do not think more than three or four times.

Q. During the last ten years?

A. Yes, sir.

Q. What did he come there for?

A. O! to make some inquiries about his ranch, or men, or something of that sort.

Q. Then he came on business when he came?

A. Yes.

Q. Did you visit his house socially?

A. I called on him at his house two or three times—several times perhaps.

Q. How many times, do you think, about, in the last ten years?

A. Well, I should think, not exceeding four or five times.

Q. Then he was three or four times at yours, and you were four or five times at his house in ten years?

A. Yes, sir.

Q. And he called at your house on business?

A. Yes, sir; and I called at his on business, always.

Q. Is that your idea of social intimacy?

A. There are a good many men with whom I am socially very intimate, that I never call on at all.

Q. Then we differ in our ideas of social intimacy. My idea of social intimacy is, intercourse in the family to the extent of meeting at a house in a friendly way—something more than what Mr. Stebbins calls intellectual hospitality.

A. I saw Mr. Hawes, generally, on the cars, going to and from the city.

Q. And these were casual meetings?

A. Casual meetings generally; yes, sir.

Q. I understand you to say, in the last two or three years of his life you hardly saw him at all?

A. For the last few months of his life—for two or three months before his death, I do not think I saw him at all.

Q. Now, for the last two years of his life, how much did you see him?

A. Well, not a great deal; I met him several times.

Q. Only casually?

A. Casually, and once or twice at his house.

MR. PRATT—Q. In the last two or three years how often did you meet him?

MR. BARNES—He stated on cross-examination he saw him three or four times at his house, and four or five times at Mr. Hawes'. There is no necessity of re-examining him.

THE COURT—Answer the question.

MR. PRATT—Q. You say that for the last two or three years you didn't meet him very often prior to that. How often?

A. I could not tell. Sometimes, two or three times a week, and



sometimes once a month, when we were at Sacramento together, and came to the city in the winter of 1857, and I saw him every day, sometimes for three or four hours every day again, perhaps—then he would visit San Francisco, and would be there for two months. Our meetings have been of that sort, casual during the whole time of our acquaintance, except when he was at Sacramento about the Legislature—when he was there we were near together, our farms being near together, we would frequently meet, and whenever we did, we generally conversed. It was accidental; but sometimes very frequent, and sometimes long.

OLIVER ELDRIDGE called for Executor. Sworn.

Examined by Mr. BALDWIN—Q. How long have you resided in this city?

A. About seven years.

Q. Did you know the late Horace Hawes in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. About a week, I think, before he died.

Q. Do you recollect the occasion of your first meeting him?

A. Yes, sir.

Q. What was that occasion?

A. I called out there to witness his signing a deed.

Q. How long were you there about, on that occasion?

A. Well, I should think in the neighborhood of two hours and a half or two hours.

Q. What was the nature of the conversation?

A. It was in regard to this deed principally.

Q. In regard to the University deed?

A. Yes, sir.

Q. Did Mr. Hawes talk much?

A. Yes, sir; he talked considerably.

Q. Do you recall any other subject of conversation between you and him?

A. No, sir; I do not think that I ever had another conversation with him except on that subject.

Q. Do you recollect any conversation upon property in the city?

A. No, sir.

Q. Do you recollect of his saying anything concerning the University deed?

A. I heard him say that he had made ample provision for his family.

Q. Did he state what provision he had made?

A. No, sir; he did not state.

Q. How did he appear on that occasion—with quietness or excitement?

A. He appeared as if he supposed his end was near.

Q. Did he say anything about that?

A. No; he spoke once or twice as though his end was near, but he didn't expect to be here a great while longer; he was making arrangements to go hence.

Q. Do you recollect of his saying anything about of what he could or ought to make of his property?

A. No, I do not think I do.

Q. When did you next see him, if you recollect?

A. I think it was two or three days after that.

Q. Can you recall how many times you saw him in all?

A. I think about four times, sir. He had asked me to call out and see him after the first time that I was there. He asked me to come out in a day or two and see him where he lived.

Q. About how long were you there on that second occasion?

A. Well, about an hour, I should think, on the next occasion.

Q. Did you have any conversation with him?

A. No, sir; only casually inquiring for his health, etc.

Q. Did you see Mrs. Hawes when you were there?

A. I saw her on one occasion, yes, sir.

Q. Did you meet her in his room, in his presence?

A. I do not recollect meeting her in his presence?

Q. When did you last see him?

A. The day previous to his death.

Q. Did you have any conversation with him then?

A. Only spoke in regard to his health.

Q. Who was there present at the time?

A. Mr. Stebbins, I believe.

Q. Any others?

A. There was no one else in the room beside Mr. Stebbins at the time—there were a number of gentlemen in the adjoining room.

Q. About how long did you remain in the room on that occasion?

A. I should say about a half an hour, sir.

Q. You say Mr. Hawes did not talk much on that occasion?

A. No, sir; except in regard to his health; he would almost every time say he was a little nearer his end, that he was failing.

Q. How did he appear when he said that?

A. He appeared very resigned; he said that he had got all his arrangements made and was ready to go.

Q. You were not there then, after the day previous to his death?

A. After his death?

Q. You said the last time you were there was the day previous to his death?

A. Yes, sir.

Q. You were not there on the day?

A. No, sir; I was not there on the day.

Q. How much do you think you were in his presence in all, during the time—from the time you first went there until he died?

A. Well, I should think about four hours, altogether.

Q. During that time what was his general manner, conduct and appearance?

A. Well, he appeared to me like a man who knew that his end was very near.

Q. Was he calm, or otherwise?

A. He was while I was in his presence?

Q. What was his manner when speaking of the university?

A. Well, he seemed to think that that was something that was going to do a great deal for posterity.

Q. Can you recall anything, or much that he said about it?

A. Only that his mind seemed to be dwelling a great deal upon this thing, and he had great hopes that it was going to do a great deal for the education of posterity.

Q. I will ask you the general question, you will answer it by yes or no, only. If from your association with, and observation of Mr.

Hawes, you formed any opinion as to the condition of his mind whether you did or not, but not what it was.

A. Yes, sir; I formed an opinion.

Q. You need not make answer to the next question until upon. What was that opinion?

MR. BARNES—I object upon the same ground as heretofore.

THE COURT—The same ruling.

MR. BALDWIN—Note an exception on the part of the testator guardian of the infants and the devisees under the will, whom pointed by order of the Court to represent.

M. C. BLAKE, called for the Executor. Sworn.

Examined by MR. PRATT—Q. How long have you resided in San Francisco?

A. A little over eighteen years.

Q. What is your business or profession?

A. I am a lawyer.

Q. Did you know the late Horace Hawes in his lifetime?

A. I did.

Q. How long, and when?

A. Well, I think I knew him first about the Spring of 1854, I think.

Q. What was the extent and degree of your acquaintance and intimacy with him?

A. Well, I never met him a very great deal—Mr. Webb, was an acquaintance of mine, had an office with him—they had offices together, and I was in to see Mr. Webb considerably, occasionally used to talk with Mr. Hawes, about the Spring of 1854, and perhaps I met him along from that time up to the Winter of 1856-'7, when I was at Sacramento during the time that Mr. Phelps was speaking. I saw a good deal of him that Winter, perhaps more than I did during any other period; and occasionally I met him since, as I met him about San Francisco. I saw him just before he left for abroad the last time, and I saw him soon after his return; and I saw him four or five times, perhaps five or six times, after he left.

Q. Where did you meet him after his return from Europe?

A. Well, I think first I saw him at my office, but I cannot say certainly about that. He left some papers with me when he went, and I have no doubt they—I don't recollect particularly about that he came for them himself; that is, that he came after them any rate I had a package of papers that he left with me, and after I saw him at the time he executed the will in August, I think.

Q. Where was that?

A. That was at his house on Howard or Folsom street.

Q. Did you have any conversation with him at that time?

MR. BARNES—Q. When was that?

A. Last August, after his return.

MR. PRATT—Q. A year ago last August?

A. Yes, sir; a year ago this last August, 1870, of course.

Q. What papers did he leave with you when he went to Europe?

A. Well, I only know from what was written on them, and I remember entirely as to that. When I had the papers, immediately after I received them, I put an envelope upon them, and sealed up and never opened them again until they were delivered to him; of course I am sure I never did, but I remember that it was written

the package in Mr. Hawes' handwriting—there might have been something more—that it was the last will of Horace Hawes; and that the package was to be opened in the presence of Judge Coon and Governor Haight. I received a letter from him a short time before he returned, which professed to have been dated at Chicago, and in which he spoke of this package, and of some papers which it contained, which I had no recollection of, and have no recollection from the package of their being anything more than the will, though very likely there may have been something more; it was considerable of a package.

Q. In August, after his return, you were present when he executed a will at his house?

A. Yes, sir, I was present.

Q. Was there any conversation on that occasion, between you and him?

A. Yes, sir.

Q. What was the subject of that conversation?

A. Well, I do not remember very particularly, only I know that I was there during the execution of the will. We had a little talk about the time the will was executed, about some circumstance that arose there, as to the execution of the will, and I waited—I had had, as I said, some of his papers before, and I waited until everybody else had gone; or, I think it is possible, that Mr. Bartlett was there, though I think not, for I think Mr. Bartlett had left; and then he put these papers into my hands again, and, as far as I could judge about it, I imagined that I was sent for to take these papers, and there was some talk about it—the papers. But I am in a little doubt about how much of the conversation I had at that time, for I had another conversation in relation to these matters which was much longer than any conversation that I had then.

Q. When did that occur?

A. Well, I cannot say; it may have been a month or two months afterwards; within three months, I should think; but it was about the time—it is very indefinite in my mind.

Q. Where did it take place?

A. That was at his house.

Q. How came you to be there on that occasion?

A. Well, I was sent for; perhaps I promised him that I would go out. I do not recollect much about that, though I think I was sent for. I told him that I would go out when I left then—that I would call on him occasionally.

Q. What was this conversation on that occasion?

A. He was talking—he spoke about the Mont Eagle University; about the endowment of it, and he spoke about the education of his son, and I do not recollect; there was a good deal said about those matters, and probably, some other things.

Q. What did he say about the education of his son?

A. Well, he spoke of having his son under the care of Professor Evans, and he spoke to me about the character of Professor Evans, as very high character, as a man and as a teacher, and of his intention to have his son—his desire that he should have the best education that it was possible for him to have, and thought that he was getting it, and would get it under the care of Professor Evans. He spoke in the highest terms of Professor Evans. That is about the amount of the whole thing.

Q. Did he say anything in those conversations about the propriety of leaving large sums of money to children?

A. Not a word. He never gave any idea to me of the character of his will at all; never spoke of it.

Q. What did he say, or how did he talk, in regard to Montgomery University?

A. Well, he talked about it with a great deal of interest. I didn't see enthusiasm, but perhaps he did come as near that as he did about any matter, but he talked with the greatest interest about it. He went over the whole thing. He talked about this deed, or a deed, and went over the whole matter, and told me how he expected—what the result was going to be. If I made any suggestion or inquiry about any different points, he explained them very fully, and told me that he had had this matter a long time in his mind, and that he had conferred with educational men and others perhaps in different parts of the world. He spoke about property, and had a great deal to say about property around large cities; how it appreciated in value about large cities, and what his idea was, as he said, that this property in a city or so would be—the value of it would be very great. It seemed to me his idea that this was going to be a very large city. He seemed to consider that the principal danger to the institution would be in the first half century, or century perhaps—perhaps in a century or so until it would come into the hands of those who were educated and be under their management. I think he asked me—he did ask me—asked me to suggest persons that I thought would be suitable. He talked about that as being one of the troubles in California in finding men who were sufficiently acquainted with such institutions and were interested enough in them—

Q. Were any allusions made to his wife in any of those conversations?

A. Never, at any time. I do not think he ever spoke to me about his wife, except at a very early—soon after he was married. I remember I met him and he asked me to call on him. He seemed pleased with the change in his life, and that there was something to show up to an old bachelor that hadn't been favored in that way.

Q. About how many conversations or interviews did you have with him during the last two or three months of his life?

A. Well, I had two principal conversations with him, and all the others were very short. The principal conversation that I had with him was when we were together alone, and when he talked with me about this University, and about educating his son, and things of that kind.

Q. Did all of those interviews take place at his house?

A. No, sir; I saw him after this last interview that I had with him. The main conversation that I had with him; he came into my office on Montgomery street—my recollection is he did not stop long—but he appeared remarkably well, better than when I saw him at his own house, I thought; I do not know but I told him that he looked altogether as though he was going to get well again. He looked better—he looked very well. He came up into the office; and my recollection is that he came there once and I saw him at the door; and he came to see me at that time; and I was in an office on Montgomery street, and I talked with him there, and saw him to the carriage.

Q. Were all those conversations, except that one at his house, during the last two or three months?

A. I had only two conversations with him at his house, and all the others were as he met me.

Q. Did you, at either of these conversations at his house, see Mrs. Hawes in his presence?

A. Never; I do not recollect I ever saw Mrs. Hawes before he died.

Q. Was there any one else there?

A. Well, when I was there once, and perhaps both times, there was a woman came and took—and took something out of the room. I saw a woman about the house, but who she was, I do not know.

Q. Did he transact any business other than what you were talking about while you were there?

A. Well, only signing these papers, the will, and I am not sure but what he signed the deed at that time—the first time I was there; I am not sure about that. Others might recollect better than me.

Q. What was his manner and appearance during these interviews and conversations with you?

A. Well, it was straight-forward talk about business, as any one else would, or as he would at any other time—quiet, and taking great interest in the matter that he was talking about, as he always did about any of his pecuniary affairs.

Q. How did you and the other people whom you saw in his presence deal with and treat him?

MR. BARNES—I object to that. The question is too general.

THE COURT—[After argument.] I sustain the objection.

MR. PRATT—Q. I will ask you the general question, from your knowledge and personal observation of, and intercourse with Mr. Hawes, have you an opinion as to the condition of his mind?

A. I have.

MR. PRATT—The same question, ruling and exception.

[No cross-examination.]

S. L. CUTTER, called for Executor. Sworn.

*Examined by MR. BALDWIN*—Q. How long have you resided in San Francisco?

A. Nearly nine years.

Q. What is your profession?

A. I am a lawyer.

Q. Did you know the late Horace Hawes in his lifetime?

A. I did.

Q. When did you first form his acquaintance?

A. I do not remember when I first formed his acquaintance, nor how.

Q. Well, when did you first come to, and how intimate, if at all?

A. My principal acquaintance with him dates back to about the time of the election when he ran as an independent candidate for Senator. That was when I first knew him with any degree of intimacy—the last time that he ran for Senator.

Q. Are you able to fix the time any nearer than that?

MR. BARNES—That was in 1867?

A. If that is the date. I do not recollect the date. In the political campaign of 1867.

MR. BALDWIN—Will you please state, passing that time of your first acquaintance, please state the general character of your acquaintance with him, as regards frequency or intimacy?



A. I was with him a good deal during that campaign. After I visited him at his office several times, sometimes by his own invitation, sometimes by my own notion, and had quite numerous conversations with him at one time and another prior to his departure for Europe.

Q. Now, I would like to call your attention to the conversations if any such, concerning his charitable foundations and cognate subjects?

A. He sent for me one day, not many months—I cannot say exact time after the close of that political campaign, and the purpose, was when I became best acquainted with him. He sent for me one day. I visited him at his office, and after some general conversation, he said that the object that he had in sending for me was that he had in mind to establish an institution. He gave me no name that I recollect, and detailed to me some of the plans that he had in his mind, though he said he was constantly improving upon and refining them, and he hoped in time to make his plan quite perfect. In detailing the University idea that he had in his mind, he said he was going to devote the bulk of his wealth to the foundation of a University. I suggested to him that it might perhaps be better to give it to the University of California, which already had some weight in men's minds, and which would be strengthened by such a donation as he proposed to give. He said that that was founded on a mistake, and he did not think that it would have much success. He was then found an institution which would be for the education of the people. His idea seemed to be to have something that was open to all. I discussed his plans to some extent. I do not remember the particulars of the conversation at this time; and then he led the subject of conversation upon the Rev. Dr. Stebbins, then the Rev. Mr. Stebbins. As I was well acquainted with Mr. Stebbins I thought nothing of it until he finally asked me what I thought of him as a man for the position of trustee or guardian, or governor in such a University—forgetting the title he gave it—and the conversation then became more careful one upon the subject of Mr. Stebbins, and his peculiarities, position, etc.; and he asked me to give a careful opinion of the character of Mr. Stebbins. I then stated to him what I thought of his fitness for the position. The conversation was quite long, and he said that he had made Mr. Stebbins' acquaintance, and was favorably impressed by him, and had sent for me to talk it over—that was the general idea. I don't know that he used those words, but that was the idea; he had sent for me to talk it over. I suggested to him that the donation which he was proposing to give, from what I knew of his property, composed the very large part of all his possessions. I suggested his children, and he talked of them, and spoke of his views to children from wealthy parents—his views concerning them. He said that he proposed to give his children—he spoke especially of his son—he proposed to give them what would give them a good education; and used some such statement as this, that the sum he named I think it was in the neighborhood of \$50,000; that is the idea I had in my mind at this time, though I don't really remember accurately. I thought that if the young man was a young man of energy and the amount he named would be sufficient to give him a good education in the world, and enable him to do well. If he were a spendthrift he would not have seriously injured himself by the time he had got through with such a sum; and if he was a person of indifferent character that it was enough for him anyhow. It was rather a calm view

man to take of his children, but it seemed to me very reasonable, although not according to the ways of the world in treating such subjects.

Q. Do you recall anything in the conversation further developing the idea of that University, or of his disposition of his property touching upon the subject?

A. He spoke of bequests that he had made heretofore to institutions, and spoke of this institution as one that would not be built in the lifetime of a single man; it was a thing that required a far reaching wisdom in its establishment, that it might not fall to the ground from imperfection in its plan.

Q. What idea did he seem to have of the element of time according to your recollection?

A. Nothing that I remember especially of the element of time, except that the institution was to be one of great duration; and spoke, as my recollection is, of the great Universities of Oxford and Cambridge, and compared this with them as something that would endure for centuries. I had several conversations concerning these matters with him. He once took me in his buggy, and we drove around through the western and south-western parts of the city, and he talked of what he thought would be the general march of improvements and value in the city, and how particular sections of the city would increase in importance in the course of time, and then spoke at that time of the sum of the increase of his property to take place through these improvements.

Q. How recently did you have a conversation of that nature with him?

A. I had a conversation with him just prior to his going to Europe; and I have seen him, but had no particular conversation, once since his return from Europe; but it was only passing, and I have forgotten where it was; it was just a little passing recognition of his arrival.

Q. You did not speak upon that topic?

A. No, sir; he asked me to visit him at Redwood, but I did not; I think that was subsequent to his return from Europe.

Q. Is that the extent of your recent conversations with him on those topics? Do you recall any other matter or circumstance on this subject?

A. No; not directly bearing upon that—general conversations concerning Spanish law, the history of the country, and its future. Sometime after this conversation about Mr. Stebbins he told me that he had decided to put his name in his plan for founding this university, and I had no further conversation with him on that subject—he said he thought highly of him. That was about the gist of my conversation about him and his affairs.

*Cross-Examination* by MR. BARNES—Q. You said you think he told you that he was going to give little Horace \$50,000. Was that the sum?

A. I do not name the sum accurately.

Q. That was about the thing?

A. That was my recollection of it—it was some moderate fortune for a young man to start with—a fortune that would be reasonable for a boy.

Q. I know a good many men that would like to have it—whereof I am one.

- A. Well, I mean a boy in his circumstances and parents.
- Q. You think that was a reasonable view with reference to children?
- A. For a boy that was young, and with character uniform it was.
- Q. You think that was a sensible view?
- A. I think it was remarkably sensible, more so than the rents usually are in regard to children.
- Q. That is not what I ask you, I ask you if that is what was a sensible view—I don't want to debate it?
- A. Yes, sir.
- Q. Are you a married man?
- A. I am not, sir.
- Q. Have you any children?
- A. No, sir.

JAMES OTIS, called for the Executor. Sworn.

*Examined by MR. BALDWIN*—Q. How long have you resided in San Francisco?

- A. A little over twenty-two years.
- Q. Did you know the late Horace Hawes in his lifetime?
- A. I did, sir.
- Q. At how early a period did you know him?
- A. The first I had any acquaintance with him was, I think, in the year 1859 or 1860.
- Q. How often did you meet him, and under what circumstances?
- A. Very seldom; my acquaintance with him was not very intimate. I happened to be a member of the Board of Supervisors at the time, and there were some matters came up there connected with the Van Ness Ordinance. There was an attempt made in the Board, or if something could be done in the Board to vitiate that ordinance in behalf of the Hawes was a large holder of land in the part affected by the ordinance, and in that way I became acquainted with him. He came and tried to convince me that the holders under the ordinance were right, and that the City was wrong in trying to wrest the property from them, and took me out to his house—or took me out in his carriage and rode over the ground that he claimed, I think this was on a street property where he died. I was out there twice over. He took me there to show me what he called his fences, to show me the title, as far as he could to me, his right to the property, and that I state simply to show how I first made his acquaintance. At that time I saw but very little of him; that is, I spoke with him when I met in the street, but never had any business transaction with him, and saw but little of him until a short time before his death.
- Q. What was the occasion of your meeting him then?
- A. The occasion of my meeting him then was, I was required to go out there to witness the deed of trust to the Mont Eagle Building, simply as a witness to his signature.
- Q. Can you recollect any of the conversation in which he took part on that occasion?
- A. I can recollect—
- Q. Particularly what he said; what the others said having no particular bearing?

A. As I say, I was called upon in the evening to go out there and witness this document, or deed of trust of Mont Eagle University, and I went there the next day; I think it was one or two o'clock in the day. There were several other gentlemen there, those who are mentioned in the deed as witnesses, and I knew nothing of the matter when I went there, except that I was called as a witness, and I went as I would go to witness any document. It was there read to us, and we witnessed his signature. He talked with us of the matter, especially that he had great faith in its operation, and great faith that it would be of large benefit to the community, particularly to the Pacific Coast, and talked to us in that general way of the whole subject. He said it had been an idea of his for many years, and he had been a poor boy himself and had to make his own way in the world to obtain his education, and it had always been his fancy to found some such institution; that everything that was written in that document, he said, had been done by himself, the whole idea was his own, all the minutæ, all the details of it; nothing, he would say, as I understand, belonged to any one else. It was all original with him; and went on and talked in that way of the institution, of what he expected would come from it.

Q. Do you recollect of his saying anything at that time, concerning the provision for his family? If he did; please relate what it was if you recollect.

A. He said in our presence at that very time, and said so several times over, I think, that he had made ample provision for his family, and that they were better provided for than most of the children—the children were better provided for than any boys or girls ought to be. He said they did not need a great deal but they had been liberally provided for by him. What that was, we did not know; he did not tell us, did not indicate to us at all, but simply stated that he had liberally provided for them, and that they would be all right.

Q. Do you recollect when you next met him?

A. When I next met him, I think I was sent for to go out there. I thought not much more about the matter after having witnessed the deed, and went off, as I was not one of the trustees myself, but simply called there as a witness. I did not think much more of it, but I think that the next time that I went, was when I was sent for by Mrs. Hawes. I was at my office and received a note from her to come out immediately, as Mr. Hawes was very ill. I went right away, as quickly as the cars could take me and I found that he had had an ill turn, and wished somebody to come there to talk with him, and sent for me first. I had this note from Mrs. Hawes and stayed there some time that afternoon, and I think that same night it was, I went out and watched with him all night, and sat up with him all night.

Q. Are you able to fix the date any nearer than it was subsequently to the execution of the deed, before his death—were you able to fix the time when that was?

A. I should think it was—I cannot say positively, but I should think it was ten days before his death. I am not positive on that.

Q. How did you find him then, physically?

A. Physically, he was very weak; he was, of course, in his bed, but after I got there, he seemed to grow a little better towards night, before I left him. I stayed most of the afternoon, and came home to my dinner and went back again that night. He seemed pretty easy, slept a good deal, and times when he was awake he talked to me. I was in the room all the time; I slept none at all, myself; there was

somebody else with him, but I was in his room most of the night.

Q. Do you recall anything of the conversation, what was about?

A. He talked on the subject of education, and on various things that had been founded throughout the United States, and especially this same Mont Eagle University—that, as I have said before, I said then, that very night, that it had always been the dear great ideas of his life, to found such an institution, and that that after generations would remember him when the institution acquired that prominence which he thought in a hundred years would.

Q. Who else was present on that night?

A. Mr. Stebbins was there with me—that is, we went to sit up with him; Mrs. Hawes herself was there all night; I was a nurse there, I do not know her name—two or three other people were in—Mr. Bluxome was in; and Mr. Bates—that is, in the morning, not in the night. Mr. Bluxome lives in the same house; that evening.

Q. What was Mr. Hawes' manner at that time, as to conversation?

A. He was perfectly quiet all night; seemed tolerably calm, was not harsh to any one at all—spoke kindly.

Q. You say Mrs. Hawes was there?

A. Mrs. Hawes was there herself, all night; she went to her room and went into another room, and slept part of the night with her, and I told her, as she had been up a good deal, I would go with Mr. Hawes, and if anything was wanted I would call her; but she better lie down and get some rest, that I would be faithful to my duty and awake myself.

Q. What was his manner towards her on that occasion?

A. His manner towards her was kind and gentle; there was nothing harsh about it at all; he, of course, was suffering from his illness, which made him nervous and irritable; as I say, he seemed more so that night than usual; he seemed to be more quiet than he was on other times when I saw him; he said nothing to her to my knowledge, nothing that impressed me at the time, more than what any man would say in a similar situation to his own wife.

Q. Did you see him after that?

A. I did. I saw him after that, I should think; well, several times.

Q. When last?

A. It was either the day or the second day before his death. I was there in the afternoon—I think it was Sunday that he died. I cannot say whether it was Saturday I was there—I think it was Sunday, but, at any rate, I was there Friday evening about 10 o'clock. I think I was there on Saturday.

Q. From, and including this occasion of executing the will, how much of the time were you with him?

A. Well, the times I have stated—I had seen him three or four times—when I went I made quite long visits, and staid with him, perhaps, three or four hours, sometimes.

Q. Did he say anything to your recollection about death?

A. No; he did not. I remember nothing that he said, I think.

Q. Did he speak of his prospects of his approaching death?

A. No; I can remember nothing that he said particularly.

t, except that a general remembrance that I have that he expected death would soon come.

Q. What was his manner in alluding to that subject?

A. Well, his manner, as far as that was, I think he disliked to allude to it all. He seemed rather to prefer to say nothing about it. He seemed to be in that condition that he desired some friends around him, but desired to say little about his death being so near.

Q. You don't recollect of his having uttered any expression on that subject, you say?

A. I don't. I could not.

Q. I wish to ask you a question which you please answer by yes or no. If, from your association and observation of Mr. Hawes, you formed any fixed opinion as to his mental condition; whether it was sound or otherwise. Answer simply whether you formed an opinion; not what it was. Did you form an opinion in regard to his mental condition?

A. I did.

Q. You need not make any answer to the next question. I will ask the witness what that opinion was?

MR. BARNES—I object on the same grounds stated to the same question asked the other witnesses.

THE COURT—The same ruling and exception.

*Cross-Examination* by Mr. BARNES—Q. Do you remember anything that Mr. Hawes said to his wife that night?

A. No, sir, I do not.

Q. Do you remember that he spoke to her at all?

A. Yes, sir; she was at his bedside a good deal of the time, and he spoke to her.

Q. Can you remember any one thing he said to her.

A. I could not state it definitely; no, sir. His conversation, what he said to her, was remarks regarding his physical wants; his medicine, or something to eat, or to get up, or have his pillow smoothed, or something of that kind. I remember nothing outside of that. It was the general conversation or direction that a sick man would make to his nurse.

SPEAR RIDDELL, called for Executor. Sworn.

*Examined* by Mr. BALDWIN—Q. How long have you resided in San Francisco?

A. Since the spring of 1853.

Q. Did you know the late Horace Hawes in his lifetime?

A. I was well acquainted with him.

Q. How long have you known him?

A. Ever since coming out to California. He came out in the same steamer. He got on, I think, at Acapulco.

Q. What was the nature of that acquaintance with him, or how intimately were you acquainted with him, I would say—how frequently did you meet him?

A. I was not in the habit of seeing him—I was not in the way of meeting him frequently—but our relations were very cordial when we did meet. I did not meet him often, but our relations were very cordial?

Q. Did you visit his family?

A. I was not acquainted with his family, sir.

Q. When did you see him last?



A. On the afternoon of Sunday, the fourth of December—I had been out walking and was passing his return home, and I concluded I would go in and have a Hawes, as I had not seen him for a long while.

Q. Where did you find him?

A. I found him—he was in bed, in a little room just office.

Q. At his residence on Folsom street?

A. Yes, sir.

Q. Will you please state the conversation as you re-

A. Mr. Hawes was formerly a member of the Erie my father was a member. We had some conversation ters. I asked him if he had stopped there while he was Europe. He told me that he did not; that he was feeble, and had no servant with him, and concluded not to We had also some conversation in regard to the professions of my father.

Q. We will pass those, and come right down to concerning matters—this was after his return from Europe?

A. Yes, sir.

Q. Did you have any conversation respecting his E and, if so, state what it was?

A. I asked him about his trip to Europe, and he told me he had not enjoyed it on account of his feeble state of health, and that he had no servant with him, as I understood him.

Q. Did you have any conversation with him respecting European nations, if so, what was it?

A. We had conversation in regard to events then taking place in Europe; the war between France and Germany.

Q. What was that conversation?

A. He expressed the opinion that the Germans were more veracious. He also expressed a low opinion of the French character for veracity.

Q. Did he instance anything that made him say that?

A. He contrasted the bulletins which were issued by the Government and compared with those issued by King William. He said the French accounts were almost universally false and unexpressed a low opinion of the French character, particularly to veracity, and contrasted the general reliability and truth of the dispatches of King William with those issued by the Government.

Q. During the war?

A. During the war then progressing?

Q. Did he speak at all of the subject of his charitable contributions?

A. He referred to his recent bequest or donation to the Society of Industry, and asked me what I had heard said about it. He said that I believe that all the papers spoke favorably of his contribution in particular, to the favorable notices of the "Times."

Q. Do you recollect what answer he made?

A. He said he believed all the respectable papers spoke favorably of him.

Q. What further? What subject next did you discuss?

A. He gave me to understand—

Mr. Bates—Never mind what you understood; state what

A. He gave me to understand that he intended to give a bequest to a public institution, which would far exceed in importance his bequest to the Chamber of Industry.

Q. Do you recollect—

A. That that bequest in its eventual magnitude would exceed any sum that had been given by any one man. He also spoke of the great age of some of the public institutions that he had visited when in Europe. He said that 100 years was but a very brief period in the life of a city. He then referred to his own state of health. He said that he would soon pass away, but that the sun would rise as usual. He hoped, however, that these institutions which he designed to found, would survive to do good when he was gone.

Q. What was his manner, when speaking of this institution?

A. It was tranquil and self-possessed when I spoke of the principle which was at the basis of the Chamber of Industry—that it was for the prevention of want by giving employment to labor, and by instructing labor, to make it more efficient, instead of giving it in the way of charity, and he took occasion to express his sympathy with those who toiled for their daily livelihood.

Q. Do you recall anything further upon that subject?

A. He told me, speaking of personal matters, that he was building a new house at Redwood City, I believe, in the country, and said if he lived until it was completed, that he hoped I would visit him there, and bring my wife with me, and he would endeavor to make it pleasant for us.

Q. Did he speak of his children?

A. I asked him where his son was, and he told me that he was in Europe, or about to go to Europe; I don't recollect which.

Q. Anything further upon that subject?

A. I have nothing further to say, sir, except that he insisted upon my calling to see him as soon as I could, conveniently.

[No cross-examination.]

MR. BALDWIN—I have three or four of our witnesses, your Honor; but inasmuch as they are not here, and the evidence they will give, with the exception of one, is somewhat cumulative, I will not delay the Court and jury with those witnesses, but with this reservation with reference to the book spoken of by Dr. Stillman as containing a diary of Mr. Hawes' opinions as to his disease, and noted down by him from day to day. We called for that at the time Dr. Stillman gave his testimony, and at this moment, for the first time, we have received it. I am not sure until I glance it through whether there is anything that would be material for either side. I would like to have it to glance over until to-morrow.

MR. BARNES—Do you propose besides that to close your case?

MR. BARTLETT—And besides reading the will.

THE COURT—If you have nothing else to do, suppose you read the will.

[Mr. Pratt reads the propounded will.]

MR. BARTLETT—That closes the case, your Honor, on our part, unless in the morning we should, after examination, choose to offer in testimony the journal which has just been presented for the first time for examination. Whether there is anything in it to cut any figure in the case, we don't know as yet; there is not much probability that we

of the jury, presenting those points to your Honor.

After some argument in reference to the order in which the case shall be had, the Court adjourned until to-morrow at ten o'clock.

## SIXTEENTH DAY.

SATURDAY, DECEMBER 2

Mr. KENNEDY argued briefly for the Proponents, reviewing the testimony.

Mr. BALDWIN—If your Honor please, my relation to the case is reduced right down to this: I have no right to appear on behalf of parties to whom any portion of the estate was transferred by the making of the will; that is conceded. On the second day of the trial, after the trial was commenced, I was appointed by the Court to represent Mrs. Martin, the sister of the testator, and the person whom he designates in his will as his aged aunt, and his children, John and Isaac. Being appointed by the Court to represent these parties, is a question of some doubt in my mind whether counsel appointed by the Court have not some distinct rights; or whether, on the other hand, as seems to be the determination, being appointed by the Court, governed by the Court in the action which they are fit to take. I think, perhaps, that I ought to preserve an exception to the ruling of the Court upon that point, that I asked to be taken on behalf of these devisees, and the Court ruling that I have no right to a separate hearing, by observing that exception in the case, as there are no other exceptions taken by the devisees generally.

Then to the jury I may be allowed to state, that those persons who have appeared, are those persons whose names you have seen in the will, whom this old gentleman recollects.

person in the will. All the parties claim through the will also claim through the executor. While I was anxious as nearly as I could to comply with the statute, that every person should be represented, yet when different exceptions commenced to be taken in the case, I was at once convinced that there could be but two sides to the case; that the will must either stand or fall. You propose now, to take an exception to the ruling of the Court on that particular; you are entitled to that, I think, because I appointed you to represent them, but not to address the jury on the subject.

MR. BALDWIN—Then I will stop here, if your Honor will allow.

THE COURT—I will allow the exception.

MR. BALDWIN—I shall be allowed to present a separate instruction?

THE COURT—If they are not objected to by the executor. If the executor does not agree with you on the instruction, I cannot hear you.

#### ARGUMENT OF W. H. L. BARNES, FOR CONTESTANT.

May it please your Honor, and gentlemen of the jury, we might well consent that this case should be submitted to you without any further discussion on either side. So far as the testimony of the proponents of this will are concerned, I take the general ground, and so I think the Court will charge you, that the testimony of the witnesses who have been introduced by them, is of very little effect in determining whether the deceased was a man of sound and disposing mind; for the general rule is, that where insanity is partial, that is to say, where it is directed to one or two or three particular subjects, those witnesses who have not had occasion to converse with the party of alleged unsoundness of mind, who have not touched the spring that puts all the machinery of the mind into confusion and arouses the fixed insane delusion, and makes that the predominating feature, are of little or no importance.

Our propositions of law are briefly these, and I simply state them to you, in order that you can apply yourselves, the evidence to them; the burden of proof, in the first place, is upon the proponents of the will. The statute imposes the duty upon them of showing that the testator was a man of sound and disposing mind; and though in cases of wills, there is no presumption that a man is insane, yet sanity is a fact that is required to be proved affirmatively; it has to be determined by proof, and not by presumption, and, according to the proof, the Court finds the fact of sanity, when the case is tried by the Court, and, according to the proof, the jury will determine the fact, when the case is submitted to them. We might contend also, gentlemen, that upon the case made by the proponents, in respect to the proof required by the statute in the outset of the case, that they failed to make a case. It is not enough that one witness shall say that the deceased was of sound and disposing mind. In every particular, the witnesses must concur to the same result; and you can take all the facts and circumstances connected with that testimony, and see whether the opinion that one of them expressed (for only one of them did express an opinion), was correct, whether, upon the circumstances as developed on the occasion when the will was signed, the deceased was of sound and disposing mind. The facts, as detailed by those witnesses, present a melancholy picture. A man, who had lived in this city for upwards of twenty years, who had been connected with some of the largest schemes in

respect to the lands of this city, and of large wealth, had been connected with its legislation, who had occupied a position of public confidence, and had been twice a Senator from the councils of the State, who had been known as a valuable eminence, and had done a great deal towards settling the laws under which a large part of our real estate was found on the occasion when that will was signed. Usually are found under such circumstances, no friend beside, no legal adviser to assist or direct his failing accomplishment of his purposes, no wife, no children; furnished room, by the light of a solitary candle, and ordinary comforts of life, he executes his will; he tells them that he is going out for a thousand miles, and he will be back to read the oration of dedication, and he uses to one of the witnesses (which is in the oration of the case made by us), most peculiar language had had about him the men who have been upon the spot, surrounded by the sympathies of the Christian religion and charity. He says not a word in relation to the approach, he raises himself in bed, and lifts his skeleton hands and declares, "When the damned vampires gather around me, they will find nothing but dry bones."

We stand here, gentlemen, attacking the will, but not the deceased. We occupy no such position as the counsel for this case, who represents the Rev. gentleman who was the father of this insane man, to take the child from the mother's arms; this man who asks you now, though he is the custodian of that little boy, to find that Mr. Hawes was of a sound and disposing mind, and, therefore, a monster. If there is any credit to be given to human testimony—if there is any credit to be given to indisputable facts of this case, Mr. Hawes, upon the subject, was as insane a man as ever stalked naked in Bedlam; language extravagant; and if the jury shall be of the opinion that Mr. Hawes' mind was in such a state of fixed and insane delusion, any person or persons who should have been naturally thoughtful, solicitude, care and bounty, and upon whom the law descends of his estate, he was incapable of reasoning and justice towards them, no matter what the provisions of the will have been; for, gentlemen, the law is, and the Court will say that in determining this case you will not be guided in your decision by the consideration as to whether the provisions of the will are proper or improper; though, of course, the provisions prohibited in the will will materially aid in the determination as to whether the man was of sound mind or not.

Was Mr. Hawes under a fixed and insane delusion with respect to his wife? It is oftentimes a delicate thing for a man to determine there is domestic difficulty, upon which side the blame lies—many an honest man—many a just man has been in an attitude of hostility to those by whom he is surrounded in a family, where there is domestic trouble there is fault on both sides; marriage may have been founded in wrong motives; it may be founded in interest, or in passion, and when that has passed away, no longer the immortal sympathy of friendship between husband and wife which gives them a common honor, a common pur-

love of children, and the faith and dependence that carries them safely, happily and peacefully through the storms of life.

But I ask you, gentlemen, if in all of your experience of life, if in all the stories that have ever been unfolded to you, you ever saw or heard of a case where the husband, without any cause whatever, behaves as Mr. Hawes did—for all the witnesses unite their testimony, that Mrs. Hawes was uniformly faithful, true and kind. Mr. Stebbins described her condition when he said that: "When I went to Mr. Hawes' house I found her cowed, dejected and unhappy, and Mr. Hawes tyrannical, vituperating, not permitting her to speak in his presence, not allowing her to utter a word at her own table." I should perhaps except Mr. Otis, who stated that when Mr. Hawes was so sick that he could not talk, he did not hear him say anything ugly to his wife. I feel proud to be able to say that Mrs. Hawes comes out unscathed and unharmed, notwithstanding the fiery trial to which she has been subjected for years; notwithstanding the insane cruelties of this man; notwithstanding he charged her with being a public prostitute, on intimate and illicit terms with Parson Fitzgerald and Washington Bartlett; notwithstanding he went from house to house, and with the tongue of a serpent and the poison of an adder beneath it, sought to blacken and destroy the character of the woman whom he had sworn to honor, love and cherish. I wonder, gentlemen, that she has preserved her character. A woman's reputation is like the vases that are found in Pompeii. They have rested for centuries without a blot upon their beauty. Their color is as bright and fresh as when they first came from the furnace of the moulder. Bring them to the light and they crumble to ashes. The moment you begin to attack a woman's character, under ordinary circumstances, it is gone to the winds. Its beauty, its purity, its fragrance, all is gone forever. Like the flower of the Camelia, the moment you touch its whiteness, it withers. I wonder, I say, that that woman has sustained a reputation. But here during the whole of this trial, in spite of the insinuations made at one time, and which have no doubt made an impression upon some of your minds, that before this case should be over there would arise evidence upon which we could see that Mr. Hawes had some cause for his slanders. If he had any cause for his suspicions of her, if he had any ground for his treatment of her, then the argument might be used, that these disgusting ebullitions of passion, this constant and habitual cruelty, carrying him even to the extent, as he told Mrs. Thurber, of having whipped his little son Horace, in France, until he made him admit that his own mother was a prostitute—a statement corroborated by the evidence of young Caldwell, who said he heard Mr. Hawes tell his own son that his mother was a common prostitute and visited houses of assignation in San Francisco—might have some foundation in reason. But there was none. The case is without a parallel, if you suppose that Mr. Hawes was a man with a sound mind, which enabled him to understand and appreciate the relations of blood, and the obligations which it cast upon him. If you ask, gentlemen, for the motive, you can find it. It was not necessary for Mr. Hawes, in disposing of his property, to have treated his wife in the way he did. He had the right of disposing of his property by will just as much if he had been a kind, faithful and considerate husband to her; as if he had done what he did, his power was the same. If this lady had been like the majority of her sex, do you suppose she would have endured this treatment? How easy for her, upon a tittle of the evidence introduced in this case, to



have walked to the Fifteenth, or Twelfth, or Fourth District Court, to get a divorce. And the Court under the circumstances of his case would have taken three fourths of the man's property and put it into her hands.

Suppose Mr. Hawes in a moment of rage had struck her a blow which deprived her of life, and he had been arraigned to be tried before you for the crime of murder, and witness after witness had shown you that Mr. Hawes, owing to mental sickness, or the sense of "grim humor," of which the counsel spoke here the other day, had been so eccentric, as, without any cause for or foundation of suspicion, to take her life under the influence of the insane suspicions proved here, do you think any one of you would hesitate to say that Mr. Hawes killed her when he was crazy, and not responsible for what he did? There is no gentleman who sits upon this jury who would say, in such a case, that Horace Hawes should not be acquitted on the ground of insanity.

Of course, in the brief period of time to which I have limited myself, I do not propose to go into any very extended review of the testimony; but I wish to call your attention to the evidence, as showing, in the first place, great general eccentricity, so to call it, on the part of Mr. Hawes, which great general eccentricity is a material aid in determining the existence of insanity. You remember the medical witnesses told you this; and there are no medical authorities to controvert the proposition. I put a hypothetical case to these medical gentlemen, and you will bear me witness that the question I put to them was far within the facts; and they unhesitatingly pronounced him upon that statement of facts an insane man—a monomaniac upon two or three different subjects. I do not assert that you are to substitute the opinion of medical witnesses for your own. After all is said and done, your own minds, your own consciences will determine this case; but their opinion is an assistance to the considerations by which you will come to a conclusion. It would have been perfectly proper in rebuttal to have brought medical witnesses upon the stand, and ask them whether upon the case propounded by me, and upon the facts as they appeared in the case, they would say a man was of unsound mind. Where is the testimony?

The proponents have not offered in the reply a single fact that tends to rebut either a fact or a consideration which we have tendered; nor have they pretended to deny the correctness of the conclusion to which our medical witnesses came. Indeed, their statements would seem to make this case of Mr. Hawes' almost an ideal case of monomania; almost a case created for the purpose of being applied in its facts to the scientific definition of a monomaniac; a man who is under the influence of insane delusions with reference to one, two or three subjects, while in relation to the ordinary affairs of life he can, in the language of the books, "act, speak and think like a reasoning creature." Our evidence has shown you that Mr. Hawes labored under a constant and habitual fear of conspirators who were going to take his life. The only witnesses who have been offered against us upon this point are gentlemen who were brought to Mr. Hawes' house for the specific purpose of hearing him talk of the Mont Eagle University, to witness the execution of the deed, or become trustees of it. None of them, except Mr. Bartlett and Mr. Stebbins, ever saw him in his relations to his wife, and Mr. Bartlett and Mr. Stebbins have given testimony in strong corroboration of the theory for which we contend. We have gone through ten years of Mr. Hawes' married life, and found no evidence to show that on any

one occasion he ever spoke a kind word to her, or ever did a generous action to her, or ever extended to her the sympathies of a man or the affection of a husband. On the other hand, her treatment of and conduct towards him was obedient, wifelike, and kindly; like Cæsar's wife, she was above suspicion. Can you doubt, gentlemen, upon the evidence, that Mr. Hawes was haunted by a fear of conspiracy on the part of his wife and others to take his life? Mr. Byrne, the District-Attorney of this city and county, a man of unquestionable integrity and character, has told you the facts of his intercourse with Mr. Hawes on that subject, fully. Counsel have insisted, and probably will insist, that these hostile actions of Mr. Hawes were but the ebullitions of a malicious, vindictive old man, aggravated by sickness, want and weakness. A man may be angry with his wife, and be so far unable to control himself when aggravated and tortured by some one of the ten thousand ways in which an aggravating woman can exasperate, as to say to her some harsh or unkind thing, whether he believes it or not; he and she may wash their dirty linen at home, and go on at peace with the world. But it's something more than momentary passion when a man deliberately goes to the District-Attorney of the county, and to the police office, and there details his fear of his wife; his belief that she was determined to assassinate him, and his conviction that she was carrying on an illicit intercourse or intimacy with a man who was his friend, but towards whom, singularly enough, he never once exhibited the slightest degree of resentment, even when in his own house. In August, 1870, he tells Mr. Bartlett, with almost devilish glee, as though he had discovered something that had put the crown of glory on his head, instead of the horns of a cuckold, that he believed Mrs. Hawes was intimate with him. Counsel will tell you he was not serious—it was only his “grim sense of humor.” What does the evidence show? Did he ever abandon it? He was like any other man who was insane on any subject. He said, again and again, the things he was compelled to say by the delusion which haunted him. He tells Mr. Byrne his story, and Mr. Byrne, sends him to Officer Ellis, who told you what transpired; how Hawes put him on the scent; how he paid him; and how he turned upon him, and declared that Ellis was as big a scoundrel as any of them. He engaged Henry Johnson, to whom he paid one hundred and twenty dollars, as I suppose my friend Pratt will say, through a “sense of grim humor,” to ferret out what Mrs. Hawes was doing; and when Johnson had followed her through the streets, and finally reported to him that there was no foundation for his belief, he turned upon him, and told him he was in league with his wife. Not satisfied with that, he went to Officer Ansbro, and told him his tale.

This christian philanthropist, this man of sound mind, on whose monument, after the lapse of one hundred years, when the admiring millions of California shall be gathered together at this University to see it, shall be inscribed in simple and sublime letters, the word “Hawes,” uses language that would ill befit a “barbary coast ranger,” and disgusts even Tom. Ansbro, so that he didn't want to have anything to do with him. Was that a mere temporary ebullition of passion, gentlemen? Was that a mere passing fit of temper, or was it a fixed insane delusion? Mr. Murphy, who was the special policeman on Folsom street, gives you his account. If Mr. Hawes had stood upon the stand, and had been talking himself, you could not have had a better picture of Mr. Hawes' peculiar manners than that man gave; you remember he asks him first, as he

drove up in his carriage, if he is an officer; and, on being informed, Mr. Hawes says: "Yes, you are here, a faithful servant of the people. He takes him into his house and tells him his insane story, and explores him to watch sharply about his house for conspirators to take his life, and pays him a trifle of money, promises more, refuses to pay the balance when he can find no evidence against Mrs. E. and swears he has not a dollar in the world. This policeman has been through the long winter nights in rain and storm, watching his back against these imaginary conspirators, and Mr. Hawes tells him what is either a gross falsehood, or else the vagaries of a diseased mind, that he was starving to death for want of bread, that he had been robbed, but that he has done a great thing which will live his name down from generation to generation, and that this must be perfectly satisfied to think that he has been one of the dians and watchers over the Hon. Horace Hawes. I felt, I say, a perfect sympathy with the witness, as he went out of the room and turned to the boy in attendance and remarked, that, "old man was not sick and crazy, he would kick him, and so go from generation to generation, as the man who kicked Hon. E. Hawes."

So much for the testimony of the public officers of the city and county, tending to prove that the man was sincere in what he bore with reference to the plots of this innocent and unhappy woman to poison and assassinate him. There is plenty of other testimony on that subject. Dr. Caldwell testified to his fear of assassination in this country, to his declarations that the thieves and robbers were doing him; that he feared he would be poisoned by brandy, of which his neighbor took a drink of in Dr. Caldwell's house. Mrs. Ober said he was afraid his wife would poison him through the servants. Peter Harkans says he told him his wife, with her accomplices, were trying to take his life; and Mrs. Ober says the same thing.

Gentlemen, I would give more for the candid and unprejudiced statements of ladies like Mrs. Ober, Mrs. Harmon, Superintendent of the Ladies' Protection and Relief Society, Mrs. Coffin, Mrs. Chard, Mrs. Potter, and the other ladies who took care of Mr. Hawes during the last six months of his life, and corroborate each other, all the opinions of men which you could put between this and Boston, and I am sure you agree with me. Mr. Hawes was under a certain kind of restraint when gentlemen went there; abashed and cautious in the presence of Oliver Eldridge, James Otis, Horace Davis, Collector Phelps, and all the notables put upon the stand here to our admiration the other day, for I cannot conceive of any other pose for which they were called—men who were there singly or together for a single specific purpose, and some of whom only helped in demonstrating the truth of that which we assented in the outset.

Again, aside from the subject of his wife—putting her out of the way—or admitting her to have been all he said she was—Horace Hawes was a monomaniac on the subject of his posthumous fame. The idea of preserving his name, of keeping alive his power by this instrument of which he spoke so absurdly to Mr. Stebbins and his witnesses, drove him mad. He was so inflamed with the idea that it made him forgetful of his duties and obligations to those who were naturally the objects of his bounty, and upon whom the law cast the descent of his estate. Whenever he spoke on this subject he exhibited the utmost insanity, but of that by and by. I was

ing that these ladies did not see him under any restraint. They saw him as he was; when he exposed his person; when he was careless and negligent, and let himself run wild. These women saw him, not surrounded by a cohort of the first merchants in San Francisco, led on by so distinguished a divine as Dr. Stebbins, but at home in the presence of family; of servants.

Now, gentlemen, if you place any credit on the uncontradicted testimony of these witnesses, you must come to the conclusion that he labored under this habitual fixed mental delusion with reference to this fear of assassination and poisoning at the hands of his wife or her accomplices. Mr. Durkin testifies to the same thing. Father Gallagher tells you that he told him that he had no doubt in the world his wife would poison him. Colby says that he even threw his medicines into the fire because Mrs. Hawes had gone into the room where they were. Mrs. Potter tells you that he declared he was afraid to be alone with his wife; and Murphy, the special police officer, that with the nurses and attendants around him, by day and by night, with lights burning, this remarkable man slept with revolvers under his head.

Now, gentlemen, if he was not insane, what horrid picture must have been in his mind? What had he done? Whom had he wronged? What had he been doing that this idea of assassination hung upon him like a cloud, and poisoned all the happiness of his life, down to the day of his death? So far as we know, on the theory of the counsel on the other side, he was the impersonation of Justice; he was the dutiful disciple of Truth; he was everything that was lovely, except that he had a certain sense of grim humor, which made him slander his wife, fear poison and assassination, and make himself out a cuckold—just for fun. He wished to get rid of his wife. He told Dr. Caldwell he wanted to get clear of her; that he would give twenty or thirty thousand dollars to get clear of her, and be left to die in peace. He told Mrs. Coffin—and that is the most comical thing yet—that if Mrs. Coffin's husband would run away with his wife, he would make Mrs. Coffin the richest woman in the State! That is about as much involved a proposition as he made when he told her that little Carrie Caldwell, his wife's sister's daughter, was Mrs. Hawes' daughter, and stuck to it against all reason, that he knew Mrs. Hawes' niece must be her daughter, because she showed affection for her. He told Mrs. Overton he would give twenty thousand dollars for a divorce; that he would do anything, and go anywhere to get rid of her. He would not allow Mrs. Overton to speak with her, and finally quarreled with Mrs. Overton and drove her out of his house—a woman who had been his friend for twenty years—because she undertook to say a word in behalf of his wife. He told Durkin that he would pay twenty thousand and up to one hundred and fifty thousand dollars to get rid of her; that he would give twenty thousand dollars to anybody that would get him evidence upon which he could obtain a divorce. Father Gallagher told you that he once told Mr. Hawes he could find nothing in Mrs. Hawes to find fault with, and that he should decide against him. All Hawes' reply was, to take his muffler and wrap it around him, and say: "I don't think you are the man to decide this case." Miss Frances Parker, a woman of high character and reputation, testifies that he told her that if she would help him to get a divorce, he would put her (Miss Parker) in her place; that he would give several hundred thousand dollars to get a divorce, and wanted her to try and help him get rid of his wife. And in the presence of

Mrs. Potter, when his wife ventured to come up from Redwood City to see him, he turned to his wife and told her for the love of Christ to leave him, to get out of his room, and let him die.

There has been a good deal of testimony here as to his general capacity for doing business, but I call your attention to a remarkable circumstance that, with the exception of the testimony of Winslow Hall, who was building his house at Redwood City, there is no evidence here that Mr. Hawes did any business at all for some time preceding his death.

The bill of rights which he proclaimed in Cannes, is remarkable evidence of his peculiar combination of unsoundness of mind with reasoning logically. Mr. Hawes goes to Cannes, and he gets into a row—of course he gets into a row—he gets into a row everywhere with his landlady about a board bill, and he magnifies it into an affair you will remember—first, to rob him, and then to assassinate him. He ran to the hotel, and got some acquaintance he has made there to stay in his room, to protect him. He makes a protest, which is absurd and pretentious, as the Bill of Rights of the Colonies, or the Declaration of Independence, or the Constitution of the State of California, or any other great document, simply because he had a little petty row about a board bill, with his landlady. In that instrument, he betrays consciousness of his condition. He says he is traveling for his health in such a state of mind and body, that any excitement—(that is, the row)—that he has been unfitted for the cares of business for many years. Now there is no evidence of mental soundness, except the Foundation, and that contains, like his will, provisions that are not in the deed or will of a man of sound sense. Speaking of business, what did he do with Mr. Swain? This gentleman had no association with him, no association with him yet he sits down in New Orleans, in October, 1869, and writes a letter to Mr. Swain, abusing every one who had any business relations with him, of any kind or sort, and then he sends him a power of attorney, or a commission as it is called, to take hold of his affairs, and manage and conduct them as he thought just what he wanted to, with the agents already appointed. That, perhaps, might not be considered extraordinary; but he sends him two letters after that, never once referring to this power of attorney, or the condition in which he had left his business; stays in New Orleans for six months, comes back here to San Francisco, and never sends for Mr. Swain, never sends for him, never asks him what he has been doing with respect to the power of attorney he had given. Now, gentlemen on this jury who transact a good deal of business, and give a power of attorney, and I ask you what would you say of the business capacity of a man, who would send you such a power of attorney, with extravagant protestations of regard and affection, and then come back to San Francisco, and never



Lathrop; in constant intercourse with Doctor Stebbins; yet who takes pleasure in comparing himself and the greatness of his work and his future with the life and doings of Jesus Christ. I suppose this is one of the commonest forms of mental delusion. The insane man imagines himself the Saviour of the world, a king, or sometimes an emperor. He thought so much, dwelt so much on the idea of his own greatness, that he positively believed and repeatedly declared he was a greater and, to use his blasphemous language, "a smarter man than Jesus Christ ever was."

How many times beside those proven he made these horrid utterances, I do not know, but so far as proponents' witnesses testified on the subject of this special delusion, they entirely corroborate our theory. Doctor Stebbins illustrated it by telling you that he had seen a pot-house politician who could spit seventeen feet and hit a cat in the eye, or words to that effect. I never saw one, but probably the Doctor has been around more among them than I have, and has had occasion to observe the power of the stream which such gentlemen throw. He said that he has seen one of that species of human who considered himself the equal of Edward Burke, and that Mr. Hawes' opinion of himself was about as highly exaggerated—that he thought he was the greatest and wisest man in the world. I have no doubt that if Mr. Hawes had not had in his mind that Mr. Stebbins, being a clergyman, would have got up and walked off when he compared himself to Jesus Christ, and abandoned him as an insane man and hideous blasphemer—he would have told him, as he did other people, that he was a smarter man than Jesus Christ ever was. Think of a man in his senses telling a witness to take a book and write down in it every word he said; that after his death it will be published, and a hundred years hence it will be read by more people, and with greater interest than the life and the doings of Jesus Christ! Think of a man whose insane idea on the subject of his own greatness was so perverted that when he reads an account of a public meeting, and sees an account of the dinner, where his Excellency the Governor of the State presides, and where gentlemen drink each other's health and toasted everybody—he lays the newspaper down and says: "Neither Jesus Christ nor I were ever toasted." Gentlemen, I hope that Mr. Hawes was an insane man, for, if he was not, if all these acts and doings of his were the product of a sane mind, whatever complaint he may have made on the subject of not having been toasted on earth, he is getting plenty of it now.

On another occasion in conversation with Mrs. Coffin, he told her he was the greatest benefactor of mankind; that Christ was the first man, Bishop Alemany the second, and that Horace Hawes was the third. This was the most moderate estimate he ever put upon himself, so far as appears by the testimony. He told another witness that Christ was persecuted and so was he. He dwelt so long upon his own exaggerated sense of his own greatness and power, that he actually became insane upon that subject, and I think the evidence shows it. He told Mrs. Hughes that he was the greatest philanthropist that ever lived; he told her that his residence on the university would last a thousand years, the house he would build would last a thousand years, and be kept up and preserved as the house of the Honorable Horace Hawes. He told Mrs. Ober he was the greatest man that ever lived; and after he was gone, as long as she lived, little children would come and gather around her knees and hear what Horace Hawes said. Little



marble slab, engraved "Chamber of Industry, founded by Horace Hawes, and suggested by Mrs. Overton."

I don't know that you can find anything more inextricable theory of mere vanity, than all this. Counsel will say but a sense of grim humor, nothing but fun, nothing but a notion of a jocose, merry and amiable temper. Gentleman, sane man, and the world is to be made up of that kind. I want to go to Bedlam, because there is where the

The question of the disposition of his property does not arise in this case. It has nothing whatever to do with it. He was, is, was he in such a state of mind toward those who would cast the succession of his estates, and who would be the objects of this care, solicitude and benevolence? If testamentary dispositions were affected, or might be affected, if they might have been affected, then you will find a man of sane mind; because, being in that condition, does not express the will of a testator of sound and sane mind. Mr. Hawes did not always entertain this idea of making of his property.

I do not agree at all with Mr. Hawes' views, nor with this sapient bachelor, Mr. Sam. Cutter, who gave his decisive opinion that he regarded Mr. Hawes' view of leaving money to children, as very wise and correct. I felt very much tempted to say to him, when he gave his opinion about the way to bring up children, what Browdie said to Fanny Squeers, who, in a dispute with her husband, said that "she wouldn't have a child named 'Tilda, not the grave." Says John, "You are coming that a little late. It will be time enough to think about naming it when you think Mr. Cutter's opinion as an expert on the subject of children, will be of more value to this Court and jury than when he gets something of his own that he can say."

may not give to public institutions, may give largely and liberally; but no man can do what Hawes did, without committing, what is to the sense and intelligence of mankind, a wrong and a crime. It is all nonsense to say that if a man has property and money, that he shall not give it to his wife or children, for fear of doing them a damage.

I don't believe this thing at all; I don't think there is a single one of us but feels that if we could have begun life with a respectable capital to go along with, in this desperate struggle for life, we would have been far beyond where we are. Would a sensible man give a boy a mere annuity, just enough to board him at a respectable lodging house; and give him two or three suits a year, but no means to commence business if he has a fancy for commerce; no means of traveling if he desires to travel; nothing in the world, but to make him during his lifetime, a pensioner and a hanger-on—not enough to make him a man, and just enough to make him a loafer. That is the result of such kind of a disposition as Hawes made.

Take the sense of that proposition. Young Horace Hawes is traveling about with this clergyman, who is represented here by counsel, and who, while in charge of this boy, is trying to make out his father sane, and therefore, a moral monster. That boy comes to be twenty-one years of age, and, instead of having a patrimony, that will gave him position, and character, and influence—instead of having the means of embarking in commerce, and using his property in the pursuits of trade; instead of having the means of carrying out any tastes he may have, either in art or in letters, or in anything else—what has he got? He has got an annuity that may be paid, and may be not. His father's property has passed into the hands of strangers, who have not a tie with him of any kind, sort, or description; who regard him as an incumbrance upon the estate, a kind of living mortgage, that is going to run around on that property, of which they will not be rid, until he dies. Do you regard that as wise, sensible, and just? If he had carried out his scheme, as he first talked of it, had given this young man fifty thousand dollars, given him something to begin with, there would be a modicum of sense in it; but what he did, in the disposition of that boy, from the time he took him away from the care and guidance of his mother, and sought to imbue his mind with hostility and bitterness towards her, from the time he divested himself of this property, and gave Washington Bartlett the control of a sum of money for the purpose of educating his boy, was all wrong. If you are going to educate your son, don't you keep the control of your money, and pay his bills when they come due, and take care of his education? For what sane reason could Horace Hawes take thirty thousand dollars, and put it into the pocket of Washington Bartlett?

Usually a ward's property here is managed under the care and attention of the Courts. A man who is appointed guardian by the Court has to give a good bond, and the Court hauls him up and makes him account; but Mr. Hawes sat down and put thirty thousand dollars, without a particle of security, without the power even of recalling the money, into the hands of Washington Bartlett, without security, to spend just as he pleases. I ask you if that is a business transaction? Is there any sense in it? For what purpose was this done? I will tell you. It was to get that boy where Mrs. Hawes could not see him; that was all. It was to enable him to tell Mrs. Hawes he did not know anything about him. It was to enable him to put that money into Washington Bartlett's hands, knowing that if he appealed to the cupidity of the man he would

hang on to the money and fight Mrs. Hawes till death or that if Washington Bartlett got his hands on the money, he would come into Court and support the will. He knew that if he put a thousand dollars into his hands he would furnish him with a weapon to fight the mother with. Bartlett joined hands with the man and plotted against this desolate woman who was left alone, praying him to find out what was the reason why she would not speak to her; and when they proposed to take her away, Washington Bartlett goes through the farce of testifying that he told Mr. Hawes that if he would not allow Mrs. Hawes to take him, he did not want anything to do with the matter. When Mrs. Hawes was away in Ann Arbor, Michigan, at that very moment; when she was from there to Europe under a contract with Washington Bartlett, this Reverend Evans, to stay five years. Mrs. Hawes, in her own pitiful way, that Mr. Hawes told her as a great grief, should see her son before they took him away for good. She said to her: "Oh! yes, you can see the boy." A woman with her back, toiling like a slave, cooking for the farm hands, a neglected, missive, outraged woman—might see the boy when she goes to get the money to buy a pair of shoes! Yes, she might go to get the money to see her son when she had not the means to get to San Francisco.

And they two sent the boy from Ann Arbor to Europe by this man to whom Mr. Hawes pays four thousand dollars a year. A careful, penurious, prudent business man pays this man four thousand dollars a year—for what? To educate his son? No; that besides. The cost and charge of the education of the boy is paid for besides. For what? Simply and only to keep the boy from his mother; that is all. The boy is put into the charge of the Man in the Iron Mask was put into the charge of the Man in the Iron Mask and sent from pillar to post under an injunction not to come home long enough for the mother to come and get him; and to this, from the hour when Mr. Hawes left that boy in Michigan, and came home and consummated this infamy with Washington Bartlett, that mother has never seen her son. Gentlemen, what do you think of that? Do you think that is a sense, a clear understanding of the relations of family and property, a sense of justice that enables a man under the statutes of Michigan to dispose of his property? I know you do not. I know your time.

It is curious he never showed one of these Mont Egmonts his will. He proposed to give them his property, but he never showed them his will. He tells them in general terms what liberty he has made for his family; he goes further, and tells them that he has provided more liberally for his family than the heads of Europe have for theirs. I don't know what the Duke of Wales gets, but my impression is that it is something more than a month; I think the Crown Prince of Prussia gets a salary above that; my impression is that this young Duke Alexander of York, gets a slight advance of salary upon the terms allowed to the Duke of York. That was the way he talked—he had made more liberal provision for them than the crowned heads of Europe had for their families. That was all an exaggeration; all monstrous; whatever he touched himself, or what he had done, it swelled and grew out of proportion, and the testimony will bear me fully out in saying so. I

find an explanation of all this; he will go back to the "Hounds," and he will tell you that because there was such an organization here as the "Hounds," and because Mr. Hawes had passed the Consolidation Bill, in 1855, that he was therefore in fear of assassination in 1868, 1869 and 1870, by his wife. That will be the argument—that because some transparencies were exhibited on the dock when Mr. Hawes came down from Sacramento, in 1855; that, therefore, Mr. Hawes had reason from 1855 down to the day of his death, to expect to be assassinated or consumed by a lot of vampires, to whom his wife was a kind of Joan of Arc.

Now, with relation to his treatment of his wife, I do not think I need spend time in considering that matter; the testimony of Dr. Caldwell, of Mrs. Douglass, Henry Johnson, Mrs. Coffin, Mrs. Harmon, Mrs. Hughes, Mr. Ellis, Mrs. Ober, Mrs. Oberton, Durkin, Francis Parker, Dr. Stebbins, Washington Bartlett, Bennett, Stillman—they are all concurrent, to the same point; I simply recite their names to you, without assuming to go thro' the testimony, or make any review; the same is testified to by Father Gallagher, Mrs. Potter, Hall, Lee, Mrs. Ebbetts, Little Horace Caldwell, Dr. Stillman, Murphy, Dr. Stebbins and Mr. Bartlett.

Now, as to Mrs. Hawes' behavior and demeanor generally, if there was the slightest thing in Mrs. Hawes' conduct that warranted what Mr. Hawes said and felt and did to her, I have not a word to say. If she was what he asserted, then what he did to her was fully warranted by the circumstances. His manner, his indignation, his neglect of her, his contempt of her, whatever feeling and passion he manifested, was fully justified; for you cannot measure the right of a man who is himself right and just, to be angry and indignant and outraged when his wife treats him as he accused his wife of treating him. There is no limit to it. It is simply a question of temperament; some men endure it more quietly than others; but no man can venture to sit in judgment on a man, if his wife were what Mr. Hawes accused Mrs. Hawes of being, or can censure him, no matter what he has done. Jurors won't convict him if he kills her; Courts won't give her alimony if he deserts her. But there is nothing against her but this:—that when Mr. Hawes went to Europe, he left her on the dock with twenty dollars and a provision of which she knew nothing. She had bills to pay that were incurred by Mr. Hawes before he went away. His relatives were here, and wanted clothing, and she had got something at Taaffe's for them. She had got six forks and six spoons at Tucker's—for it appears that he never had had any before in his family—to support the dignity of Hawes' family, and the bill amounted to fifty dollars. There was a grocery bill, and a butcher's bill, and Taaffe's bill not paid; she did not have the money, and the collectors were after her from day to day. She took the advice of the County Judge of San Mateo county, of the District-Attorney of that county, and of Charley Fox, and they told her that it was her duty to take, out of the large quantities of grain stored away in the granary at Redwood, a hundred sacks of wheat and sell them, and pay those little bills. That was all. Didn't she do right? Didn't she do justly—honestly? When Mr. Hawes came home, she told him. Was there anything in that which should make him do and say what he did? I do not think you will say there was.

If you find the facts to be as we have stated them, then applying to them the opinions of the medical witnesses, and to the facts which are entirely uncontroverted, will you not say, upon the whole evidence

in this case, that Mr. Hawes was a man of unsound mind. I doubt it for a moment? Can you entertain the slightest doubt you compare his action and conduct with that of men in the affairs of life? I do not allude to any of the little mean actions of a man at all. I don't allude to the fact that he would not work without a suit. I don't allude to such circumstances as that a poor woman who went there and worked for him a week and the cash was short seventy-five cents when she left her employer for her pittance. I don't allude to all the circumstances which would lead to a contempt for him as a mean man. Lay aside also his doing to get food from the neighbors without paying for it, and his days without eating, and then begged from his neighbors. I say he was insane upon that point—but it is that delicacy which you have a right to consider in determining whether a man's mind was right. We may not be as rich as Horace, but we take reasonably good care of ourselves; we have a breakfast this morning before we came here, and we have a good dinner to-night; and the mass of mankind do so. It is an extraordinary circumstance when a man, according to the testimony of Gallagher, deliberately starves himself to death; and in the case of Dr. Bennett, wilfully deprives himself, from mere meanne of food, and the delicacies necessary to a man in his condition of mind, of the love of money. It is a terrible sight to see a man who God has so blessed with all this wealth, so niggardly to have ordinary comforts of life, and to every person that comes to him, puts up a miserable mouth of petition, and opens his eaglet in its nest. He deprives himself of necessary food, and he niggardly that when the good Mrs. Ober suggests to him that he better have a pocket-handkerchief to wipe his nose in the case of an accident, and customary among civilized nations, and he gives her to go and buy him a dozen cheap pocket-handkerchiefs, and when she brings them to him, he is so overwhelmed with horror in consequence of the magnitude of that transaction, that he refuses to use one. Mrs. Ober has to take them and pay for them herself. He has a lady who comes to take care of him for nothing, because he gives her seventy-five cents for a bowl, instead of two bits. I do not find the man insane because he was so mean as to excite unless you believe that his conduct was one of those instances which will assist you in arriving at the conclusion that the man was of unsound mind.

Consider his language and demeanor to the effect of the man in France; the language to Horace about his mother, and the way in which they traveled, and the way in which he left on at Chicago to pick up anybody he could to accompany him to the plains, without money to supply him with a place to travel—his whole conduct is generally peculiar, general, and with a "sense of grim humor" not ordinarily seen in life. I only ask you to consider all these facts and their connection with the case as evidence of great general eccentricity may throw light upon the other propositions. Consider the testimony of Dr. Stillman, and Dr. Shurtliff, who were of the State Insane Asylum, and Dr. Clark, who has been in the same institution, Drs. Shorb, and Bennett, and Mr. Bentley, and Buckley, the English physician who testified whose statements I am sure you will lend such weight as

titled to and try to derive as much assistance from them as the case and the other facts proved, will admit of. I do not ask you to say that the man is crazy because the doctors say so; but they give you the general theory of the case; they tell you what the test is by which you can measure it; they give you the measure, and into it they put the man, and you can see how completely and fully he comes up to the standard of the insane man on one, two or three subjects, while at the same time he is able upon other subjects to think, act and speak like a rational being. Now, if that is the principle, and the doctors and books so give it—put Horace Hawes in the measure, and he fills it. That is all I have got to say on the subject of medical testimony. If there is any weight to be given to it, see if you can explain the remarkable facts that are brought out in this case on any other theory. It has been often well said that the theory of a case is a good deal like the lock of a door. You have a bunch of keys and there is a door, and it is locked. You try the first key and it don't fit; it is a peculiar and complicated lock. You try key after key, and finally you get a key that goes in; the lock rolls back and you open the door and walk in. That is the way these cases are tried; the theory of the case is the key that opens the door, that harmonizes the facts, that makes all the circumstances connected with it clear and luminous, that enables you to come to a correct conclusion.

I submit if it is not easier to you, to settle the facts in this case, upon the theory that this man was a man of unsound mind, than that there ever existed on the face of the earth such a monster and demon as that man was towards those whom he was bound to love, protect and cherish. If he was not insane, God help him! God help the memory that will be left after him. He proposed that this life of his should be written at the expiration of one hundred years—that one hundred years hence the most cultivated graduate of Mont Eagle University, should write his life, and then a monument was, by the terms of his will, to be erected to his memory. If, when that one hundred years has passed, and by your verdict, this will, and this disposition of this man's property shall be established, and the people of this State shall have expended for the glory and the greatness of his name, \$6,000,000 in buildings—for gentlemen, by the terms of this trust deed that is in evidence, not a dollar of the rents, income, or profits of that property, is to be applied to anything else but the course of instruction—if you shall establish this will, and determine that he was a sane man from the evidence in this case, and the people of this State come together to erect a monument to the memory of this great benefactor, and a discourse like that he asked Dr. Stebbins to deliver by his bedside, shall be pronounced by the greatest scholar of Mont Eagle University, and if within the then crumbling ruins of the City Hall which is just now being erected, that student, from musty records there remaining, shall seek to take out the life of Horace Hawes, as it will then be found in that bundle of yellow and musty leaves, and shall find there that he was what the testimony in this case has shown, what a history he will present.

If they put his statue on the summit of the monument, as the French nation put the statue of Napoleon the Great upon the Column Vendôme, in the guise which Mr. Stebbins described him here, with feeble and shrunken frame, with glittering frightful eyes, with nose and chin coming nearer and nearer together, with the tongue of a serpent in his mouth, and the poison of the adder beneath it, while around the column



like that of Vendome, the record of his life is pictured suppose that generation will say of this? What do you will say of the barbarism in which we lived? They will be insensible to the ties of blood and family, and justice as christianity we were; how destitute of sense of what was to uphold so monstrous an injustice, if the man was saved by the vagaries of a monomaniac, to establish a law of learning. Gentlemen, I thank God this State does not have such gift in the interest of learning. This nation does not make such donations in the interest of education; rather than at such a sacrifice, we had better go back to barbarism.

I have already occupied more time than I proposed. I make no justice, so far as I myself am concerned. I have made no elaborate argument to you, gentlemen, because you will not permit, and because I am too well satisfied that your intelligence will enable you to take the testimony, and a law as it will be given to you by the Court. I leave the case without undertaking to speak of the claims of this widow. I only say to you, in conclusion, that Counsel on the case ask you to find that Mr. Hawes was of sound and disposing mind, that these acts which he perpetrated were simply the grivings of a humorous old gentleman. I implore you to throw charity and mercy over him; I ask you to deal with him as he is dealt by, if after you have gone to join the innumerable men unhappily should find such things to read of as witnesses have stated of him. Let the world know, and let him who has known him learn that he was not responsible for what he did, because God took away his reason. Leave him with the mercy and charity which we must believe He extends to those whose minds are shattered and broken. There was a time, that insane men were under the special care of Providence; the Gods for some reason took away their senses, and made them what they were; and so the hands that harmed them were not cursed of the Gods. Treat him so; don't let his children grow up, that twelve intelligent citizens of San Francisco determined that their father was a moral monster; determined that he was a man who slandered, robbed their mother and themselves, and turned back, at the grave, and lifting his withered arm in triumph, told the "vampires" to do their worst. Let us deal with him in this case, gentlemen, and, I have no fear, if you take with you to you the facts of this case, as developed by the evidence, and as will be given you by the Court, that your verdict will be in accordance with the principles of justice, of right, of truth, and in the interests of society.

## ARGUMENT OF L. E. PRATT, ESQ.

If the Court please, it is a matter of some pleasant reflection to me that so far as the legal propositions contended for by Mr. Barnes in his argument go, there is very little controversy between counsel on the other side and myself. What instructions he may have framed and asked your Honor to give to the jury, embodying principles other than those which he laid down and foreshadowed in his argument, I know not; but in his argument of the case this morning he presented three distinct propositions, the first of which was to the effect that the burden of proof was on the executor to show the affirmative of the proposition of fact involved in this case. With that we find no fault. It has been so adjudged, and we cheerfully yield an assent to that judgment. With his second proposition, that if the jury find the deceased was under such a fixed delusion toward his wife that he could not rationally consider her claims upon him, they must find that he had an unsound mind, we also find no fault. But of the third proposition, in which he endeavors to press the doctrine far beyond the point established in the second proposition, we do complain. That proposition is, that if the jury find from all the facts that the testator's disposition of his property was or *might* have been affected by what he calls a fixed delusion, then they must find him of unsound mind. Against that I protest. It is very true, if your Honor please, that in the case referred to in the 33d Volume of New York Reports—the Seamen's Friends' Society *vs.* Hopper—in the course of a long and learned argument upon the facts there presented, I believe precisely that language does occur; but in the first place, it is a significant fact that there were two opinions rendered in that case—one by Chief Justice Denio and the other by Judge Brown—and it was on the opinion of Judge Brown, which takes decidedly a more modified position, that the other Judges indorsed their approval—

MR. BARNES—[Interrupting.] On the contrary, Judge Brown's opinion is stronger upon that point than the other.

MR. PRATT—I leave that question for your Honor to determine. I have read both opinions with considerable care, and I take the position that the opinion of Judge Brown very much modified, and fell short of, the language made use of by Chief Justice Denio in that respect. It will be found, too, in that case, that there was the existence of a state of facts very different from the state of facts here. There was no conflict of testimony. There it was said that a fixed delusion in regard to his wife and family had existed for years before he ever conceived the idea of giving his estate to charitable institutions.

The testimony in this case is directly the reverse of that—that for thirty years or nearly half a century the prominent idea of the testator's mind had been the foundation of some such institution as this—directly the reverse of the condition of facts set forth in 33d New York. What we say is, that the language which Chief Justice Denio uses in that case when he says if the disposition was or *might* have been affected by this delusion the will must be set aside, is one of those extreme and unguarded expressions which have too often occurred in the writing out of an argument upon a case. But we say this jury ought not to be so instructed by this Court, because in the first place the Judges in that case were not called upon in making their decision to

his relations toward his wife, and they might perfect with that finding at the same time say, there is a *bare* such a given state of facts *might* have affected him. things might exist in the minds of the jury. They may an overwhelming preponderance of testimony; they may morally certain. It may reach almost to actual den certainty in their minds that in this case the disposition was *not* in fact at all affected by the relations of the d his wife—and yet they might be obliged to confess the possibility, a remote possibility, that some other man the same state of facts *might* have had the disposition affected by such a condition of things. To say to this j find upon this given state of facts, that the disposition *might* have been affected, they must set aside the will, in eral terms that if they find there is a *bare possibility* the been so affected, they must set it aside. The use of s calculated to mislead and misdirect the jury. They ar whether the disposition of the testator's property was a delusion; not whether it *might* have been. They are to question by the preponderance of testimony, as they a every other question of fact, and when they have found derance of testimony that as a matter of fact, the di property was *not* affected by the relations existing betwe and wife, there is no occasion to go beyond that and find that possibly it *might* have been, they must still fi condition of his mind.

We say then, first, that although that language do course of the argument and opinion in that case, yet i the face of all the decisions which have preceded it on at least, it is pressing the doctrine to an unwarrantable what any previous case ever had declared. And we as

enlighten you. And so far as the law of the case is concerned, I leave it in your Honor's hands to fix the instructions, and charge the jury.

And now, gentlemen of the jury, I propose as briefly as may be to address myself to you; and I congratulate you, gentlemen, wearied and worn, as I have no doubt you are, with long and patient listening, that your labors are drawing so near to a close; and I congratulate you, also, upon the further fact, that you occupy to-day what I conceive to be the enviable position of being able to repel, in some measure at least, what we have too often heard said of late, in regard to verdicts of juries in both civil and criminal cases. You have been called here to try a case which has attracted as much of public attention as any which has arisen here, perhaps, for many years. You are called upon to try and adjudge a case in which it is frankly confessed by us, that the overwhelming voice of the public is against the stability of the will. You are called upon to try a case in which it is well known to each of you, that the sympathies of nine-tenths of the community in which you live, are enlisted in behalf of the contestant; and I say you occupy the enviable position of being able, by calmly and deliberately settling the facts upon the testimony, by your verdict to show, that although the newspapers may have determined the case one way, and although the public may clamor for a certain decision, yet you, in the discharge of your duty, as sworn officers of the law, may prove yourselves insensible to all these extraordinary influences, and vindicate the character of jurors and their capacity to determine cases.

Gentlemen of the jury, there is something more involved in this case than the mere question of who shall have this man's estate. Down beneath that, to be passed upon and determined, to be sustained or to be overthrown by your verdict, lies the broad and deep principle—whether a man shall be master of his household, and the disposer of the fortune which his own labors have accumulated, or whether, when the light has been shut out from him, twelve men, impaneled in a court of justice, shall say that, because he didn't think as they think, and because he didn't make such a disposition of his property as they would have made of theirs, he shall be pronounced insane, and the disposition which he has made, shall not stand. I say that in the trial and determination of this case, is involved that deep, broad principle, which pertains to each and every one of you, and the principle upon which, and by which, your own conduct through life, your own interests and your own power to dispose of the fortunes which you yourselves have made, may be judged for or against you. Now let us, gentlemen of the jury, endeavor to get away from much of the apparent confusion. I ought, perhaps, justly enough to say the *ad captandum* and clap-trap style which has been thrown around this case. Let us get beyond this mere question of sympathy for an individual, however much she may be entitled to it; let us go beyond the mere question of whether a part of the estate shall go to one person or another. Let us go down to the foundation, and try to determine this case upon the broad principles of law and of nature, by which the conduct of every man in civilized communities ought to and must be adjudged and governed.

Sixty years ago, Western New York was a wilderness, and out from the rude log cabin of some pioneer in that dense forest, not yet entered upon his teens, went a boy, with no fortune save the brains with which Heaven had endowed him, the blessings of his parents, and

the garments which protected him from the inclemency of the elements. A few years later, and this same boy, penniless, but with that ambition which Heaven gives, stood beneath the grand old hall of the college in New Haven, and asked admission to its halls. He was poor, and he could not enter there. And then, in the grief of disappointment and mortification, and with a noble interest in the world and mankind, the boy resolved in his heart, that, if ever he acquired property, he would endow some public institution, where poor boys like himself, without money and without price, might find fit themselves for the great battle of life. Through half a century, through all those years of weariness and sad experiences; through youth, middle age, manhood and old age, the project formed and determined upon then, has been steadily pursued, and here, in the year 1880, at that time entirely unknown, out on the shores of the Pacific, on the 24th day of February last, the grand conception of the boy found expression in the foundation deed of the Mount Eagle University. This is the man whom you are called upon to pronounce insane. Now, gentlemen of the jury, I have neither the time, nor have I the inclination to go in detail over this testimony again, and I shall pass hurriedly along from point to point, and discuss the evidence that is before you upon general principles, rather than make any effort to take the testimony of witnesses, *seriatim*, and criticise the testimony of each. The position of the counsel on the other side is, that it was a hatred of his wife which dictated that disposition of his property, and that that it ought not to stand. And they follow that up with their position that that hatred of his wife was in consequence of an insane delusion as to her character and conduct towards him. Insane delusion! It is admitted on all hands that if a man believes in the existence of that which does not in fact exist, and the facts themselves irrational or impossible, or if being possible in themselves yet there is no testimony to support them, and the party can be permanently reasoned out of that belief, then you may justly pronounce it an insane delusion. Now, let us take for example the expressed fear of Mr. Hawes' that his wife might poison him. In the first place, gentlemen of the jury, you will bear in mind that all the testimony upon this proposition ceases somewhere in the month of January. In September, in October, in November, in December, and perhaps as early as August, we find produced before you in testimony a number of isolated cases of the expression of that fear in the mind of Mr. Hawes. Now, very much of that is explained by the testimony of Mr. Bartlett, in which he says that Mr. Hawes never really apprehended danger from his wife, but he expressed it to him that he was afraid that the servants would do something to kill him, because of their carelessness in administering food, or in giving him the wrong medicine. Now, I apprehend perhaps that in almost every instance in which the witnesses called here, who heard Mr. Hawes make expressions in regard to being poisoned, it would be found as a matter of fact that such expression was made in some such way as that that it alluded simply to the carelessness of nurses about the house, or the danger of their mistakes in administering medicine to him. I apprehend in other cases it may be accounted for upon this basis, that when he was in a towering rage or passion, either at his wife, or at his cook, he might have accused them of attempts to poison him, not because he believed they wanted to, but because he saw no better way in which to spit his venom out against them. They were the enemies

sions of a nervous, weak, sick, irritable old man, dying, as he said, uncared for and alone, and who cared not how bitterly he expressed himself towards those who contributed to his annoyance. But let us look a little further in explanation of this testimony. Mrs. Hughes and Dr. Stebbins—Mrs. Hughes herself in the first instance, and Mr. Washington Bartlett and Dr. Stebbins in the second—and in corroboration of her, show that, as they expressed it, it was a cat and dog life between them. There was no affection on either hand; no love; none of those little social amenities which characterize the proper relations of husband and wife; but only cold conformity to what was required of them towards one another, and asperities and wrangling where love and harmony ought to have prevailed.

Mr. Hawes had been to Europe; he had left his wife on the farm at Redwood, and we succeeded in establishing the fact, that at least she had a home there; that she had a man to take care of the place; that she had a servant in the house; and there was at least a cow and some poultry on the place; in addition to providing this home, and the servant, and cow and poultry, and providing for the expenses of the household, he left a stock of groceries on hand, and \$100 a month to spend, paid to her by his agent, Mr. Bates; what other revenues she had beyond that, we know not. He returns here to find that in addition to the expenditure of the moneys thus paid to her, she had involved him in debt to the amount of \$1,500. He was a suspicious man by nature, a man of keen cunning, a sagacious man; and when he found this condition of things on his return, with his habits of life and business, and her knowledge of them, with the regulation of his household—that no debts should be contracted except upon a written order from him—and when he remembered how feeble and almost dying he was when he left his wife here to go on that trip, he inferred, and you, gentlemen of the jury, may justly infer for him, that his wife believed he never would live to return from Europe, and she never could be called to account for her acts in his absence.

MR. BARNES—I call the gentleman to order.

MR. PRATT—I say if that cannot be logically inferred by the jury, from the facts before them, then I am wrong.

THE COURT—What is the point?

MR. BARNES—He says it appears here from this evidence, that Mrs. Hawes run her husband in debt \$1,500, while he was gone away, believing when he went away, that she would never be called to account when he came back. There is no such testimony.

MR. PRATT—That is not what I stated. If the learned counsel on the other side cannot comprehend the English language, it is not my fault. What I said was—after detailing the facts that when Mr. Hawes returned from Europe, and found the condition of things—he might rationally have inferred, and that the jury, if the testimony will logically sustain that conclusion, may, from the facts before them, infer it for him, that such was the opinion that she had. The testimony does show that from the time of his return there was a terrible condition of things existing in that household. The hate which had existed before was aggravated and exasperated; he didn't love her, and he didn't believe that she loved him. It had been, according to her own statement, a case of mutual contest, almost from the day of their marriage. She told you with her own lips, that very soon after they were united, he began to abuse her and treat her unkindly, and that all through their married life, when she did things for which she didn't consider herself



blamable, it was almost his daily habit to say things were accuse her in vulgar English of telling falsehoods. No relations, these personal animosities, these bickerings, the existing between them, the old man is near his grave. He has a fortune, which she knows that he is about to place in such a way that she shall not command one dollar of it. There was a temptation—men and women are only human; is it impossible that a thought might have presented itself, in her mind, that a glimmering light, which at best can only burn another day, snuffed out to-night, the fortune would be saved—the debt paid yet, it may be to-morrow.

Understand me, gentlemen of the jury, that I make no charge against Mrs. Hawes; I am only saying to you what thoughts might exist in the mind of a suspicious man who hated his wife and she hated him. Not that such an idea ever entered the mind of Mr. Hawes; do not understand me to intimate thus; but I am saying anything more rational or more reasonable than for Mr. Hawes, in his condition to suggest to his own mind that exactly that state of things might perhaps exist in her mind. Now, follow that state of things with this additional fact which is in testimony before you: On a certain day some mush was brought to Mr. Hawes; he was accustomed to eat that mush from day to day, he liked it, and on this day there was something peculiar about the mush. It was of a tolerable taste, he could not eat it. He summoned the cook to his room, and there one by one demanded of the nurse, the servant and the wife, that they should taste it. They all tasted except Mrs. Hawes, and she refused. I asked her to taste it; she persists in her refusal, and then the old man came out in a towering passion of rage, and says there is a conspiracy in the household to poison him. Now, I appeal to you, gentlemen of the jury, in all candor, were there not sufficient facts and circumstances presenting themselves to his mind to arouse in him a suspicion that possibly there was a design to poison him. If there was any existing, any fact or any appearances as they presented themselves to his mind to create that suspicion, then the fact that he had no evidence of insanity.

Then it is said or argued that he was insane because of the fidelity of his wife without any reason whatever. Now, I apprehend, gentlemen of the jury, that you have your own experience more than one case of your neighbor's quarrels where the husband has taken up a suspicion of his wife without the slightest tangible or apparent reason. Men arrive at those things intuitively and instinctively; from a look, a motion, a word, and suspicions ripen into facts and when they can assign no possible reason for it. But how was it? That Mrs. Hawes is a woman whose character is beyond reproach, I never had the slightest doubt or suspicion. I am saying the facts as they presented themselves to his mind. Mr. Bartlett had been for years a frequenter of his house; he had been on the best possible terms of personal intercourse and friendship with his wife. All at once Mr. Hawes discovers that, without his knowledge, she had been four or five times to see Mr. Bartlett in his private office. He discovers that she had made an engagement with him at the Lick House.

Now, it was in that light that the facts were presented before Mr. Hawes; and I say those facts alone are sufficient, at least in the mind of a man who was naturally of a jealous and suspicious nature, accompanied with the general fact that between them there was no love, no intercourse, not any of that social attachment and social interchange which ordinarily exists between a man and his wife. Is the fact, then, that under such circumstances as these, a suspicion of the fidelity of his wife was created in his mind an evidence that he was insane? He never really believed it. Father Gallagher tells you that, when Mr. Hawes related his grievances to him, he sat down and talked and reasoned calmly, and he asked him that question: "Mr. Hawes, do you really doubt the fidelity of your wife?" Mr. Hawes answered "No." There never was, then, a real belief in his mind. And when he blurted out to the nurse or cook and Mrs. Hawes herself an imputation upon her chastity, it was because he was made angry and he thought it would annoy her to be thus charged, and he wanted to make her suffer in that way. But at one time I have no doubt there was a certain suspicion in his mind. It was when he learned of these visits to Mr. Bartlett, and to the Lick House; and when that suspicion really was aroused, and it amounted only to a suspicion, was it any evidence of insanity that he should ask a detective to ferret out the facts, and advise him whether or not it was the truth? And when detective Ellis reported that he found nothing to substantiate it, was it an evidence of insanity that he should still have some little glimmering of doubt, and ask another? And when detective Johnson reported in the same way, might not he still employ detective Ansbro? And when detective Ansbro made his report, he said: "Very well; you may abandon the matter." And about this time comes the interview with Mr. Bartlett himself, in Mr. Hawes' house, in which he accuses Mr. Bartlett of double-dealings, in having had secret interviews with his wife, while at the same time he occupies towards the husband the relation of confidential friend and trustee for his son. Then there is an explanation between Mr. Bartlett and Mr. Hawes. The interviews he had had with Mrs. Hawes were explained, her visits made known. Mr. Hawes was told how it happened that she came to his office, and what the object of their meeting at the Lick House was; and then Mr. Hawes is satisfied; and from that day on we hear no more accusations against the fidelity of his wife. Now, tell me, gentlemen of the jury, what there is in that to establish the insanity of this man? I have no doubt in my own mind that while he was making these investigations through those detectives, he hoped and prayed that what had been told him might prove true, for he sought some ground on which to obtain a legal separation from her. While that doubt and suspicion rested in his mind, and while he was trying to ferret out the facts, I have no doubt he hoped the charge was true, for during those same months he was saying to other witnesses that he would give \$20,000, that he would give \$100,000 to be rid of the woman who day by day vexed and annoyed him towards his grave, that he might have peace to settle up his business, and die at rest.

Now, gentlemen of the jury, we pass from that to a general view of the evidence upon another question involved in this case. They say this old man was crazy on the subject of his posthumous fame. Well, it is just possible that the very fondest and brightest anticipations that the old man ever indulged may yet be more than realized in that great future which none of us can measure. Why, gentlemen of the

jury, when he devised and put in force as law the Consolida-  
 tion Act for this city and county, there was a more universal howl  
 has gone up from the crowd that has hung around her  
 this will. When he fathered and framed and passed the  
 Law, there was the same universal howl against the old  
 been instrumental in making that law. But how is it to-  
 day, a few years, instead of a century, have passed, and the  
 courts of this State have pronounced both measures, measures  
 of reform and propriety. It but shows to you, gentlemen,  
 that this old man had that peculiar cast and character  
 which saw far beyond the experience of to-day into the  
 vast sea of time, where the more limited visions of our  
 counsel for the contestant and myself never can hope to

MR. BARNES—I hope I cannot, if that is the way to

MR. PRATT—[Continuing.] And that was the con-  
 sideration of Hawes in regard to this Mont Eagle University; not for  
 the next decade, not for the next fifty years, but for all  
 that lofty eminence which men of lesser intellects have  
 he looked over and beyond the fleeting years which are  
 us now, and into the grand future of California, when  
 prosperity and progress shall have been fully unfolded  
 San Francisco shall have become the commercial centre of the  
 State, have grown to be a city of millions where there are to-  
 day a few thousands; when the prolific valleys which surround and  
 the Bay shall bear on their bosoms the teeming millions  
 population, when commerce, art and literature and sci-  
 ence shall be poured upon us their choicest treasures from every quarter  
 the finest vision he experienced may be more than rea-  
 lized, the splendid grandeur of the institution he has founded.  
 magnificent endowment! It is admitted here that this  
 \$800,000. Consider that after all the expenses have  
 the legacies settled, allowing for them a margin of \$200,000  
 is left a net value of \$600,000, to be devoted to the  
 Mont Eagle University. Outside of that are to come  
 endowments, as they are called, which are to amount  
 in a few years to \$1,500,000.

MR. BARNES—\$6,100,000.

MR. PRATT—Let me give you a little specimen of  
 which the gentleman on the other side makes his calcu-  
 lation. I am free to say that in almost every respect, the counsel on  
 reviewed this case with remarkable fairness; but in this

MR. BARNES—[Interrupting.] Well, I will admit it.  
 At any rate, I was nearer right than you were. You said  
 and I said six.

MR. PRATT—Very well. Within the next hundred  
 years, there is to come from external endowment  
 \$4,000,000—within the first fifteen years, \$100,000 must  
 you suppose, gentlemen of the jury, that the wealth, the  
 intellect, the public enterprise of this State, will permit  
 ment to lapse for the want of raising \$100,000 in fifteen  
 years the little town of Napa the other day, as you well know,  
 \$60,000, to procure the establishment of the Odd Fellows  
 Home, in their town. I say the public and society  
 this endowment to lapse, for the want of those external  
 then, comes year by year, and from decade to decade

endowment of this university, and Horace Hawes, looking forward into the future, and seeing all this, was right when he said that Mont Eagle University would stand for all time, as one of the grandest endowments of society, and one of the noblest and best of educational institutions. And well and justly might he indulge the happy dream, that somewhere in that distant future, when all these opinions of the success of the University had been more than realized, the attention and curiosity of posterity should be directed to the man whose teeming brain and generosity to society, had laid broad and deep the first foundation stone of such a fabric as that. There is nothing of insanity in his visions of his future fame, nor is there much evidence of insanity in the fact that he proposed to Dr. Stebbins, that a hundred years hence, when his monument should be reared, it should bear no fulsome inscription, no detailed account of the life and doings of its founder, but a plain and simple shaft, on which should be inscribed alone, his name. Are there any evidences of insanity in that?

They tell you next, gentlemen of the jury, that he was insane on the subject of religion. Dr. Caldwell, who was their witness, tells you that he was the most profane man he ever knew. They have hunted over more than a decade of Mr. Hawes' life, and in their vigilant search they have dragged to light three expressions which seemed to manifest a want of respect in his mind for the character of the Saviour of the world. On one occasion he said that he himself was a smarter man than Jesus Christ. This was indeed excessively coarse, vulgar and profane. Let it be remembered, however, that when Mr. Hawes spoke of his being a smarter *man*, by the very force of the terms he compares the human in himself to the human in Christ, and not his humanity to Christ's divinity; but this was said in a mere outburst of passion and disgust, and with reference only to the capacity of men in the ordinary business of life. It evinced a coarseness for which I offer no apology, but it was not insanity; and to drag into this Court an expression of that kind, coming from him, and ask you to find in all seriousness that because he made use of that profane and disrespectful expression he was therefore insane, is absurd, and in perfect keeping with much of the testimony which has been brought before you. On another occasion he was reading an account of a Chinese dinner; was reading the toasts, and he made the remark—whether he was disgusted or whether he was jocose or how it was we know not—but he made the remark, as any other profane man might, that he had never heard of Jesus Christ or Horace Hawes being toasted at any of these dinners. It was a peculiar expression; very peculiar. It was an expression that would not have come from the brain or tongue of a man who had a proper respect or appreciation of those things; but go down around the purlieus of this city, in the haunts of vice, around the police court, on the wharves, whenever you choose, you will find a thousand men using worse and more damning expressions every hour of their lives, and it never occurs to you that they are insane. Now, so much for all this testimony about his profanity. Why, if every man who indulges in excessive profanity must be pronounced insane, I venture to assert that there have been times when you could have put almost every man in this Court-room on the way to Stockton. It is a common thing for men who are not professors of religion to indulge in outbursts of profanity when they are in a passion.

Now, there is some more testimony here that is in perfect keeping with all that. One Mrs. Overton came in here, and with all the ap-

parent sincerity in the world, and in all seriousness, conversation about the Chamber of Industry, in which Mr. Hawes said he was going to erect a magnificent building, the finest in the world, and going to put a slab of marble on it, and underneath it: "Suggested by Mrs. M. Now, Mrs. Overton was around his house, and this old man at times exceedingly fond of chaffing and jesting, as much as satire and sarcasm as he could be, and there was a great deal of humor, and it cropped out once when he said that Sawyer produced one eminent lawyer named Sawyer, and that he made all her Sawyers judges. And again, it cropped out in a letter to Mr. Swain when he suggested that one of the witnesses on the other side, he thought was a very honorable man, rather dull. And so other illustrations might be adduced from every conversation with Mrs. Overton which has been introduced with such seriousness as evidence in this case, is the man who has all the features which the counsel for contestant have. Why, this woman was hanging around the house—she was a friend of his wife from girlhood, and particularly intimate with him, and if the fact were known, Mrs. Overton expected that he would die, and that Mr. Hawes knew it. And so he jests with her, and says he shall have a great chamber of industry, and she shall have a chamber, where she can work and set an example of industry and perseverance, and it never entered the brain of Mr. M. that it don't seem to have found a lodgment in the brain of the other side, that Mr. Hawes, during all that conversation, was enjoying himself immensely at the perfect gullibility of the other side; that fact is dragged in here with seriousness; jest which the man has perpetrated for the last ten years, whether by burst or passion, no matter what the circumstances on the other side and counsel on the other side clap their hands and applaud the evidence of this man's insanity! Why, gentlemen of the jury, to terize it in plain English, it is absurd to talk about the insanity of Mr. Hawes.

They talk to you about the testimony in regard to his children in France. Where is the evidence of it? In the first place, he kept them strictly, too closely, but Mr. Hawes was born and educated more than half a century ago; but society has changed since then, and his notions in regard to the method of training children, and his ideas of their instruction were formed and fixed under a different system and under different circumstances which prevails to-day. They were studying; these boys were studying these lessons were three times as long as those in the present time; that is immediately followed by the testimony, that in the past they have five or six recitations every day, and these boys were learning nothing but French a part of the time, a part of the time, French and Latin; only two studies against six; that is the portion; they should have been three times as long as they are now; and when these boys disobeyed him he shut them up. Now, I venture to assert, that when I was a boy of thirteen, I should have been exceedingly glad by being shut up in a room; Mr. Hawes' ideas of education were the ideas of a man whose youth was spent more than a century ago; and they ask you to find him insane because he shut these boys up in a room where

him. They say he punished 'them every day; sometimes chased them around the room with a chair, and once when he was eating, threatened to cut their throats with a knife. Now, remember the condition of this poor old man at the time—it seems he was very sick; he was very nervous and very irritable, and he had these two lads of 12 and 13 years of age; one of them you saw on the stand; and if there is any thing in physiognomy, physiology, phrenology, or any of the ologies, then you could see that that boy was just as pouring over with mischief and the old cat, as he could stick. Now, here was an old man, almost dying, nervous, irritable and impatient, and here were these two young wild-cats, in the room with him, as you can well imagine, up to every conceivable mischief and disturbance; and the impatient, petulant old man, when he could stand their noise and tricks and confusion no longer, caught up whatever first came at hand, and went for the boys, and the boys went around and over and under the furniture, until the old man sat down exhausted, and there it ended. And that testimony is dragged here with all the seriousness conceivable, and you are asked to find this old man crazy, absolutely insane, because of such things as those.

Another little thing to which they seemed to attach great importance is, that this sick old man, this old economist, this parsimonious old gentleman, as they call him, when he got to New York, or Chicago, or somewhere else, I don't know where; somewhere East, at any rate, wanted to send back to R. B. Swain, the authority to generally superintend his business—it was not a power of attorney to transact his business, but it gave power to him to discharge agents and appoint others, and consult with Mr. Bates and others, and to generally superintend his business—in other words, he wanted him to keep watch over Mr. Bates; not that he doubted his integrity, but because he doubted if Mr. Bates was quite sharp enough to look after Horace Hawes' business, as it ought to be, and so he wanted him to look out for Mr. Bates. Well, that letter of attorney happened to be written on a *part* of a sheet of paper; and that is evidence of insanity. I suppose, according to his idea of economy, the old man was at that time, on the fourth floor of some second rate hotel, and he was sick and feeble, and the chances are that he happened to find just that piece of paper, and he sat down and wrote upon it. It would have been perfectly in keeping with the old man's character, if he had been in his own office, where there was an abundance of paper, to have taken up that broken scrap, which just answered the purpose, and made it serve the office it did serve. And yet because he wrote that letter on a *part* of a sheet of paper, he was insane! Why, gentlemen, the absurdity of such a proposition is so great, that it is hardly worth while to occupy your time longer about it. But after he came back, he did not go to see Swain at all. In the first place, he didn't know Mr. Swain when he sent him that letter; but Mr. Swain has told you on the stand, what positions he occupied. He was well known in this community, and to Mr. Hawes; and though he had had no personal intercourse with him, Mr. Hawes knew he was an honorable and worthy man; but when Mr. Hawes got back here, there was a little matter of such public notoriety, that I apprehend, the gentlemen of the jury will take notice of it.

Now, gentlemen, as to this matter of classification of the testimony in this case, I have called your attention to a great many ridiculous features in the evidence of the contestants, and endeavored



to show in the first place how utterly absurd and illogical you to find insanity upon such testimony. And now attention for a few moments, perhaps, to what might be the effect of the witnesses. In the first place, they are all men, and cooks, and servants about the house. Most of them were there two hours, some were there a day, and some were there a week. Every single one of them Horace Hawes knew; perhaps it would not be overstated to say he knew them like him. He sent them off; he was ugly to them like him. They say he generally commenced quarrelling when they took up the controversy on the part of the man; and that was the most natural thing in the world to do. And when the women, housemaids, cooks and servants, scullions, and grass widows, come and tell you that in their opinion they have never seen him an hour, some a day, and some a week. Why, of course, gentlemen, every woman on the face of the earth thinks a man is crazy who doesn't give all his property to her. They would be a precious set of fools if they didn't think so. If I had been his wife I would say he was crazy. He took to take his property from me and give it to some other woman. Of course Mr. Hawes was crazy in the estimation of the women when they come to a little different class of women, as the women, Mrs. Overton, and Miss Parker, the testimony of the men as to insanity; and when they come down to the two men, Father Gallagher, these men who knew more of Mr. Hawes than all the nurses and cooks and chambermaids in the whole lifetime, why didn't they take their opinions as to insanity? Father Gallagher talked with him about his wife. Mr. Hawes went on and on about his list and history of all his grievances; the old man sat and listened to him, and Mr. Hawes listened to reason; and when he asked him: "Now, Mr. Hawes, do you really believe in the old man's faithfulness?" he said "No." He didn't believe any such thing when you come to this other set of witnesses, Mr. Bartlett, who were there every day for months, and spent much of his time; saw him in his intercourse with his wife and his conduct towards all others who came there, they told you that he was like other men. They were not permitted to say at the time whether they considered him insane or not; but they were permitted to testify to what was infinitely better, and that is that nothing extraordinary transpired there, and how other men and women treated him, and how he dealt with and treated them. Why, then, gentlemen, say the books, of insanity or sanity, is the man who is treated like this, and who deals with the alleged lunatic. They dealt with him just as I am treating you to-day. How could there ever be a suspicion expressed that that man was insane when the clouds of the valley had covered his dust!

And they ask you to find that he was insane because of the way he made, say they, the proper provision for his wife and children. And gentlemen of the jury, the provision which he has made is embodied in that will which was read to you last night. His ideas were from youth. "If," said he, in the most solemn pointment, beneath the granite walls of that old college, "If I ever accumulate property, I will endow some place where fatherless children may come and fit themselves

ggle of this life." Again and again before his marriage, before he knew Mrs. Hawes, he expressed repeatedly to different people his view that it did children more harm than good to leave them large means to spend; and the same view he expressed from year to year, before he knew his wife, in regard to founding some public institution. Pat. Durkin comes in here and swears that Mr. Hawes intended that it was only by endowing some public institution that he could prevent this property from going to his wife. How does such testimony stand in the face of the fact that the endowment of this public institution had been the cherished scheme of the man's whole life. But find that he entertains these views from boyhood up, a quarter of a century before he ever saw his wife, and yet find that it was hate and jealousy which made him endow this institution! Why, behold the ability and inconsistencies of the reasoning by which they seek to get from you a verdict against that will. And entertaining these views, the time draws on at last when the old man is to close up his worldly affairs, and make the last disposition of his property.

It is a significant fact, gentlemen of the jury, that it is in evidence before you, that he executed a will some time in August. What the provisions of that will were we know not, but we know that it was at the time when the animosity between him and his wife was at its very highest pitch. Afterwards, on the second day of March, when, as

Bartlett tells you, they were on better terms than he had ever known them before, he revokes the former will, and makes another. They say that he was then incompetent, because of the broken and shattered condition of this mysterious king which sits in judgment on man's doings; incompetent to rationally weigh the relations of his wife to him, her claims upon him, and the claims of his children. Now, gentlemen, the best answer to all that argument is that will itself. He told Mr. Bartlett at Redwood that he had consulted with Mrs. Hawes, and that she preferred an annuity to property. That was the idea upon which he made the will. And when Mr. Bartlett went to negotiate a separation between them, Mrs. Hawes said to him: "As the wife of Horace Hawes, I think I ought to have \$200 a month to live on, separate and apart from him; but I will take \$150." Now, the time comes when he is to put his signature to the will, and accepting the words which Mrs. Hawes herself had spoken, he endows her with an annuity, so long as she lives, incapable of alienation, incapable of diversion or encumbrance in the sum of \$2,500, or a little over \$2,500 a month. And yet they say that that is evidence of his insanity at the time he was incapable when he wrote that clause of knowing the relation of that woman to him, and her claim upon him. Why, gentlemen of the jury, how many of you would be glad to-day to take an annuity instead of a salary of \$200 per month for the balance of your lives, give up all the property you have got on earth? Why, this appeals to our sympathies for this woman, endowed with an inalienable and increasing net income of \$200 per month; more, I venture to assert, than the whole household of Horace Hawes ever cost him during his life.

And yet he was insane; and this is the evidence of it, this hatred and his abuse of that woman! And remember, gentlemen of the jury, these \$200 per month, which come to her all through her life, are hers alone; the daughter is provided for—\$100 per month until she reaches twenty years of age, and after that, \$3,000 per year during all of her life—like the other annuity inalienable, cannot be converted, cannot be encumbered, but is a burden imposed upon this property so long as

she lives; and nothing on the face of this earth can tell her. Then comes the provision made for the son—in the hands of the trustee, Mr. Washington Bartlett, for the boy's education and travels in Europe, and after that as long as he lives. Now, many of you would have been entered the struggle of life with an income of \$300 per year as you should live, impossible to be diverted from your necessities under heaven. I ask you, gentlemen of the bar, the widow, and son, and daughter of Horace Hawes would you do that will upon its very face bear evidence of insanity? Did he do calmly, rationally, and with conscience and wisdom, consider their relations to him, and their claims upon him, and tell you it was an insane delusion, it was hate of him that made him make this disposition of his property. Well, after their long years of struggle and contest, and bickering, and ever much he disliked her, when the old man was near death, he sat down calmly and deliberately to wind up his estate, and the will bears unimpeachable testimony of how well he considered his claims upon him, and her relations to him. And yet you say by hate! He leaves her \$200 per month during her life, and only hope that half the men on earth might come to him so cordially.

And then they talk as an evidence of insanity, of the disposition of the son from the mother, and sending the boy to Europe for years. Why, gentlemen, you know from your own experience that men of wealth, men who can afford it, prize nothing more than the privilege and advantage of sending their sons abroad, and to finish themselves by travel in the old world, and this man sends his son he so much loved, to Europe, and after having his education completed, they ask you to say that he was insane. Oh, no. There could be no excuse in this, in sending the son there, excepting the desire to separate him from his mother; I apprehend that as men of common sense would make an argument on that proposition, you will find that that is the best argument for the benefit of the son, and not for the benefit of separating him from his mother. And then, counsel for the plaintiff talks about the conspiracy of Prof. Evans and Washington Bartlett, and says that the interest in the result of this contest. I can have no interest in this contest. Has he forgotten that the money was placed in Mr. Bartlett's hands was absolutely assigned to him, and invested eight months before Mr. Hawes died, and the will into a thousand fragments, the question of its validity, that money is absolutely vested, and in his hands, and it does not matter whether this will stand or fall, it does not matter in the position of that fund, given during the lifetime of Mr. Hawes, eight months before his death, and by his order invested. It is unnecessary to respond to any of the insinuations in regard to the character of Mr. Bartlett, it is only necessary for you to know as it appears in the will that he was a professor of the first college of learning in Michigan, and that he was recommended to Mr. Hawes by the President of Cornell University, in New York. He was a man of high social standing, a man in whose care, and for whose tuition you would be glad to have any son of yours travel, and it is a little strange, it is a little significant, that when I was here, and told you that he thought Mr. Hawes insane,

knew him, that he still sent his son off with Mr. Hawes to Europe. Why, gentlemen, this whole family, brother-in-law, sisters, and sister-in-law of Mr. Hawes, who all came here and swore they believed Horace Hawes insane, have all been ready and eager enough to enjoy whatever beneficial advantage might come to them; and it is a little remarkable, I repeat, that Dr. Caldwell should have sent his son to Europe, in charge of a crazy man; yet, according to his own testimony, that is what he did. There was another little circumstance that dropped out here. Mr. Hawes said to two witnesses, Mr. Howard and Gov. Haight, something about the provision he had made for his son. Mr. Howard said he told him that he had left him a richer legacy than some of the crowned heads of Europe left their sons. Gov. Haight says he told him substantially the same, and that he thought he referred only to money; but it is possible and probable, that he meant to include in that legacy, the advantages he had given him in the way of education and travel, and in future years, the fame of his father. And I repeat, and most of you know the fact, that there are many sons of crowned heads in Europe whose income is not three hundred dollars per month. The Crown Prince of Prussia, the royal sons in the line of the Czars, the Prince of Wales and some others, are exceptions; but look at all the petty princes of Central Europe. I am reminded of a circumstance that occurred some years ago, when one of the celebrated gun manufacturers in the United States sent one of his long-range guns over to one of those seven-by-nine German Princes—that was before the Prussian consolidation, but they were crowned heads. The Prince to whom the gun had been sent wanted to try its range and efficiency, and he found that the dimensions of his kingdom were not large enough, and he could not discharge the gun without firing across the kingdom of his neighbor; and he had to get permission from the neighboring Prince to set up a target in his dominions. I say that is the condition of some of what are called the crowned heads of Europe, and there is but faint glimmering of reason or sense in asking you to find Mr. Hawes insane, because he said he had left to his son a richer legacy than many of the crowned heads of Europe left to theirs.

Now, gentlemen, I don't propose to weary your patience much longer. Day after day you have sat here and listened patiently to the details of this testimony. You will retire to your room for consideration, and there weigh all the testimony that is before you—every fact and every circumstance. You are the sole judges of the interest, the credibility and the weight to be attached to the testimony of any and every witness; and from a calm, patient and careful consideration of all that you know about this case, you are to say whether, when Horace Hawes signed that will, he was so insane that he did not know what he was doing. Why, the instrument itself bears on its very face the unalterable negative to such a proposition as that. I ask you especially to bear in mind that we make no assault upon the character of any one connected with this case. It was said to you by counsel on the other side, with something perhaps of an imputation upon me, that at one time in the process of this trial an intimation dropped from my lips that before the testimony closed, we would show to you that Mrs. Hawes was vulnerable to some of the charges which Mr. Hawes had made against her. If I have uttered words which could be construed into the expression of such an idea, I was not conscious of it. All that we ask, all that we wanted, was to present to you what she did do and what she did say, in order that you might place yourself in the very

attitude which Mr. Hawes occupied, and then judge whether what she did do and say, there was any reason at all for the notions arising in his mind. I ought to be the last man on this earth who would raise his voice in distrust or in imputation of character of any woman. I apprehend the female character that I appreciate and prize as highly as the counsel on the other side. For near ten years—so bright and joyous, they seem but hours compared with the bitter months which have dragged away and walked this earth by the side of a more than human—an angel. Of all the blessings which Omniscient Providence has given, the influence of a good, true and noble woman is the greatest and most beneficent.

Gentlemen, with all this high appreciation of the female character, with all this knowledge of her beneficent influences, remember the determination of a legal contest, whoever may suffer, must be before you, and by the facts you must be governed. On the one hand, personal sympathy for the woman who seems to have been unkindly treated and much abused, I know will attack your inclinations and pull at your heart-strings to return a verdict for her. On the other hand, the stern logic of facts and your oaths as jurymen must be observed and followed in returning your verdict. We appeal to you in the interests of society; we make no appeal in the interests of any one. We simply admonish you to weigh carefully the facts, and do truth and justice, though the heavens may be against you.

And now, gentlemen, having detained you much longer than I ought, having spent more time than I ought in the argument which you understand as well as I do, I thank you for your considerate attention, and leave the case with you.

#### CHARGE TO THE JURY.

The Court charges the jury as follows:

GENTLEMEN OF THE JURY—I join with the counsel in congratulating you that your labors in this case are about to come to a close. I must express to you the thanks of the Court for the patience with which you have attended from day to day, and the patience which you have uniformly listened to the testimony in the last act, so far as the Court is concerned, is to give you the verdict. The case has been so hurried that I regret to say I have not prepared in so systematic a manner as I would have desired the instructions which I should have given you. I have not had time to consider as well as I might the instructions that have been suggested by the counsel on either side. For that reason, gentlemen, I detain you a little longer than I otherwise would, because you will find some repetition in both the views expressed by the counsel and the views expressed by the Court. I think, however, that you will find nothing inconsistent, and perhaps the repetition of the truth will force it more strongly on your minds than one hearing of it.

On behalf of the Executor you are instructed as follows:

First—If you believe from the evidence in this case that the deceased, Mr. Hawes, was of sound mind, and understood the nature of his acts and his alleged will, then you will return an affirmative verdict to the first question embraced in the issues submitted to you.

*Second*—Should you believe from the evidence in this case that said Horace Hawes signed the said will, or that some one signed it for him in his presence and by his express direction, you will return an affirmative answer to the second question embraced in the issues submitted to you in this cause.

*Third*—If you should believe from the testimony in this cause that said alleged will was signed by said Horace Hawes, and attested or witnessed as required by law, two witnesses being sufficient under the law of the State of California, then you will return an affirmative answer to the third question submitted to you on the issues herein.

*Fourth*—If from the evidence in this case you believe that said Horace Hawes signed said alleged will, and that he signed the same freely, without restraint, undue influence, or fraudulent misrepresentation, then you will return an affirmative answer to the fourth question embraced in the issues submitted herein.

*Fifth*—Should you believe from the testimony herein that said alleged will is the true will of said Horace Hawes, and that he was competent to make the same and that his alleged antipathy toward his wife did not in fact influence him to make the same, then you will return an affirmative answer to the first question in the issues herein.

*Sixth*—It is not necessary that the will or any part thereof should be read to the subscribing witnesses, or either of them, except in cases where the testator is blind, unable to read, or laboring under some disability which renders it likely that he does not know the contents of the instrument generally. It is sufficient in fact that the testator declares the instrument to be his last will and testament, and calls upon the witnesses to attest it as such.

Again, on the part of the proponents of the will you are instructed: That in civil cases, of which this one the jury are the sole judges of questions of fact, but the question of fact in such cases is to be determined by the preponderance of testimony. Absolute certainty is not always attainable, and you will carefully weigh all the evidence and strike the balance and find accordingly.

The burthen of proof in this case, is on the Executor to show affirmatively that the deceased was of sound and disposing mind at the time of executing the alleged will. In determining that question you are to be governed by the preponderance of the testimony merely.

If a person knows and understands the nature of the business he is engaged in and has a recollection of the property he means to dispose of and of the persons to whom he means to convey it, and the manner in which he means to distribute it, and is not controlled or influenced by any delusion in disposing of it, then he has testamentary capacity and is of sound and disposing mind in the contemplation of the law.

It is only a belief of facts where no rational person would believe, out of which the individual cannot be permanently reasoned, which constitutes insane delirium. And hence the mere fact that one believes in the existence of facts against the preponderance or even great preponderance of testimony, is not proof of insanity, though such belief, if absurd or unreasonable, may be weighed with other facts in making up a decision.

If the case be one of alleged monomania, or partial insanity, or insanity on a particular subject, or towards a particular person, instead of general insanity, then the extent or degree of insanity as to such subject or person must be the same as already stated in defining gen-



eral insanity, otherwise the individual is of sound and the contemplation of law. That is when the allegation is to a particular person; it must exist to such a degree of clear and rational consideration of the relations of fact and his or her claims upon the bounty, kindness, or reason alleged to be insane.

Though one may be ever so much deluded as to and his dislike or hatred of her ever so intense, yet if, when he deal with or consider the claims of such person upon his affection or hate does not enter into or influence his conduct, his acts are as valid as if such delusion or hatred existed, and a will so made should be regarded as the product of a disposing mind.

Though you should find that the mind of the deceased was what diseased, disturbed and impaired, and that he entertained extravagant or absurd opinions on some subjects, or was laboring under delirium, yet if you also find that his disposition of his property was not caused or affected by such delirium or disease, but of calm deliberation and the exercise of conscience, judgment, then the will itself is to stand as a sufficient cause, and must be regarded as the will of a sound and disposing mind.

The question you are trying is not whether the deceased was a husband, and treated his wife and family affectionately, whether the will is such a one as you would have made in similar circumstances; but simply this: Was he competent? (that is, was he sane?) If he was competent, then he was the sole judge of what he would make of his own property. The jury, however, must regard the provisions of the will as a circumstance in regard to sanity.

You are the sole judges of the credibility of the witnesses, and the weight to be given to any and all of the testimony. You believe or disbelieve, as your own good sense and judgment dictate. You will carefully consider, compare, and weigh the testimony, circumstances and facts, and return such a verdict as the preponderance of the evidence so considered, may fairly warrant.

Those are the instructions, on behalf of the Executor.

I instruct you, as asked, on behalf of the Contestant.

*First*—That in the examination of wills, the sanity of the testator, is always a question of fact, to be decided upon the whole evidence, according to the plain principles of common sense.

*Second*—That the terms "sound and disposing mind" so commonly used on this subject, stand opposed, not only to all derangements of mind, occasioned by melancholy, sorrow, misfortune, sickness or disease, whenever such derangement deprives one of the rational faculties common to man.

*Third*—That the memory which the law holds to be necessary to the making of a will, is when the testator has understanding of his estate with judgment and discretion, which has to be shown by his words and actions, and behavior at the time.

*Fourth*—That disposing mind and memory, is a mind which has a capacity for regarding and discerning, a knowledge of the relations, connections, and obligations of family and blood.

*Fifth*—That if the jury believe, from the whole of the evidence, that the deceased Horace Hawes, was laboring under

relation to his wife and his family connections, who would naturally have been the objects of his testamentary bounty, when he executed his will, and that its disposing provisions regarded, or might have been caused or affected by the delusion, the instrument is not his will, and cannot be supported in a court of justice.

*Sixth*—That if the person persistently believes supposed facts, which have no real existence, except in his perverted imagination, but against all evidence and probability, and conducts himself however logically upon the assumption of their existence, he is, so far as they are concerned, under a morbid delusion, is in this case, insanity. Such a person is especially mad or insane on these subjects, though on other subjects he may reason, act, and speak like a sensible man.

*Eighth*—That a person may have, upon some subjects, and even generally, mind, memory and sense sufficient to know and comprehend ordinary transactions, and yet upon the subject of his wife who would naturally be the object of his care and bounty, he may be of unsound mind.

That a man may be insane upon one particular subject and one only. That this may result from a permanent delusion, rooted in the mind and irremovable in sickness or in health, and yet it may not show itself in any ordinary transactions of life.

That if the jury believe from the evidence that the deceased Horace Hawes was, at the time he made this will, laboring under a delusion in respect to his wife, and that this delusion influenced the making of his will as to her, then the instrument proposed is not the expression of the will of a testator of sound and disposing mind, and cannot be regarded as his will.

If the jury believe from the evidence that the deceased prior to and at the time of executing the script propounded here as his last will and testament, was under an insane delusion in relation to his then impending greatness and posthumous fame, which controlled his judgment and misled his understanding in relation to persons who would by the natural and the usual course of things become the objects of his care, solicitude and bounty, and especially upon those on whom the law would cast the inheritance of his property, the instrument in question must be regarded as invalid, because it does not express the will of a testator of sound and disposing mind.

That where a man is of unsound mind in respect to his wife and other relations, he cannot be regarded or counted a free agent in making his will, as far as she or they are concerned, although they are as to the rest of the world.

That the jury in approaching the question here at issue, are in the first instance to pass over and not to regard or be influenced by the disposition of that property as made by the deceased Horace Hawes in the instrument here offered—and are not to determine whether the same be proper or improper, partial or advantageous to mankind or to the State, charitable or reprehensible, but are to satisfy themselves as to the condition of the testator's mind in regard to sanity at the time of making the script here offered for probate.

I will add, the jury may take these things under consideration in determining the question of sanity or insanity.

Yet, if the jury believe the testator had not the capacity required, the propriety of the disposition made by the will, is a matter it does not concern you to consider. If on the other hand you believe that he

had the necessary capacity, the injustice, if such it be, of excluding wife or other relatives, would not affect the validity of the disposition, although the justice or injustice might cast some light upon the wisdom of the testator as to his capacity.

That the true test of the absence or presence of insanity is the absence or presence of delusion. And that whenever the patient conceives something to exist which has no existence whatever but is the product of his own heated imagination; and whenever at the same time he is so conceived, he is incapable of being, or at least of being perceived, as reasoned out of that conception, such a patient is conceded to be under a delusion, and the absence or presence of the delusion so understood forms the only true test of the absence or presence of insanity.

That where partial insanity exists, and the will is the direct product of it, it will be invalid, although the general capacity be still unimpaired, and this personal insanity may be upon a particular subject or to a particular person. In either case the sound and sane mind is deficient or wanting in general to the particular transaction.

That a man may be both sane and insane at the same time, in different subjects, and it is in this case that the phrase partial insanity is generally used.

*Eighteenth*—That where the law recognizes the difference between general and partial insanity, yet if the jury should believe the whole evidence that the will here offered was made under the influence of partial insanity, and is the product (that is, the product of insanity), it is as invalid as if made under the effects of an insanity never so general.

That unsoundness of mind embraces every species of mental incapacity, from raging mania to that delicate and extreme feebleness of mind which approaches nearer to and often degenerates into insanity.

That while the same strength of mind is not required of a man in making his will as is required of a man engaged in the transaction of the business of life, yet the testator is bound by the laws to exercise judgment about his property, to consider the justice of his testamentary bounty, and must be capable of discerning and feeling the relations and obligations of family and blood. Therefore, the words "some strength of mind," as used here, are to be understood as in the sense of some strength of sound mind. That the qualities pertaining to sound mind and constituting testamentary capacity, must be present, although their strength may be greatly impaired.

Yet if the jury are satisfied from the whole evidence that at the time of the execution of the will the deceased was of fixed and sound mind and memory, the burden of proof is upon the respondent to prove that at the time of executing the will—of executing the will—was of sound mind and memory.

*Twenty-third*—Yet, if upon the whole evidence is left uncertain, that is, not proved to the satisfaction of the jury whether the testator was of sound mind or not—then it is left uncertain whether the will is valid under the statute, a person capable of making the will, and the will here offered cannot be admitted to probate.

Those, gentlemen, are the instructions I give you on behalf of the proponents and contestant. The issues propounded for your consideration are as follows:

*First*—Was the said Horace Hawes, deceased, of sound and disposing mind at the time of the execution of the said alleged will?

*Second*—Was the said alleged will signed by the said Horace Hawes or by any person in his presence and by his express direction?

*Third*—Was the said alleged will signed by Horace Hawes and attested as required by law?

*Fourth*—If the said alleged will was signed by the said Horace Hawes, did he sign the same freely, without restraint, or undue influence or fraudulent misrepresentations?

You will by your verdict return a direct answer to each one of these issues. Such answer as in your judgment from the evidence introduced before you, you shall deem warranted. The statute of wills provides as follows:

“Every person, over the age of eighteen years, of sound mind, may by last will, dispose of all his estate, real and personal, and such estate not disposed of by will, shall descend, as the estate of an intestate, being chargeable in both cases, with the payment of all the testator's debts.”

You will have no difficulty, gentlemen, in coming to a conclusion on the last three propositions stated in these issues. The controversy in this case, is had on the first: Whether the late Horace Hawes was of sound mind on the day and time of executing the document now before you, alleged to be his last will and testament? This is a question of fact for you to determine, and you must determine this from the evidence before you. The burden of showing that he was of sound mind at the time aforesaid, is upon the party, or the parties presenting the will for probate. If, after considering all the evidence in the case, and giving to each and every portion of it, such weight as in your judgment, it is entitled, you should be satisfied that the decedent was not of sound mind at the time aforesaid, then you will respond in the negative, in finding upon this issue. If you should be satisfied that the decedent was at that time of sound mind, you will answer this interrogatory in the affirmative. Of the credibility of the testimony, gentlemen, and of the weight to be given to it as a whole, or to any and every part, you are the sole judges. The Court has performed its functions, so far as this trial is concerned, in deciding what is competent to go before you as evidence, and in instructing you as to the law.

In determining the fact as to whether the deceased was of sound mind, you should look alone to the evidence in the case. To determine what is meant by sound mind, or its opposite, an unsound mind, is not easy. Insanity is difficult to define. You have heard from the experts (some of them of the medical profession), examined before you, that insanity has never been properly defined. It is said to be a disease, a disease of the mind, and as we cannot see the mind nor get any conception of it from the test of our senses, it is difficult to define either the mind or any disease of the mind. We know the mind exists because of its manifestations, and we must detect the disease, if any, in the same way. These manifestations of a diseased mind occur in all cases of unsoundness of mind, from monomania, which is derangement on one or more subjects, to dementia, which may be properly called the death of the intellect. The test of insanity is such a delusion as will cause the person affected by it, to conceive something extravagant to exist, which has in fact no existence, and he is incapable of being reasoned out of this belief. If this delusion exists as to one

or more objects, it is called monomania; if as to all objects mania. It seems to have been as difficult to name them properly as to define them. The term monomania, interpreted, means insanity on one subject. Yet that is not the way it is now used to convey—but insanity on one or more subjects. I improve upon this nomenclature, and to get the words to express more clearly intended to be conveyed, “partial” and “general” insanity have been used by many. And yet those words seem as paradox as the others, for under this classification we have sane and insane, at the same time. I think we may dispel the confusion by remembering, it is the idea we are seeking words. And I take it, that partial insanity and monomania are one and the same thing, and the existence of the disease does not prevent the mind may be free to act on all other subjects as well as on the one. With much clearness and precision as if there were no disease at all. And therefore if monomania is established, it is not necessary to show that the man has capacity to transact ordinary business. You can take the latter fact into consideration, however, in your general conclusions. You will not confound *eccentricity* with *insanity*. The absence or presence of delusion, such as I have pointed out, is the test to distinguish them. It is deemed sufficient to point, that eccentricity is manifested by extraordinary or unusual conduct, uninfluenced by any delusion, whilst insanity is manifested by conduct (it may be) the same conduct, always the direct result of delusion.

Now, gentlemen, if you believe from the evidence that the making of this alleged will Mr. Hawes was laboring under delusion or delusions on one or more subjects, then he was a maniac and was of unsound mind. And if you believe that monomania had an influence or might have had an influence on the making of this will, you will answer the interrogatory propounded to you, “No.” If, on the contrary, you believe that at the time of the making of this alleged will the deceased was laboring under no delusion, you will answer the interrogatory in the affirmative.

With these views, gentlemen, I think you can understand the case, and you will now retire and make up your verdict upon the issues presented.

The Sheriff was then duly sworn to take charge of the case, and thereupon they retired to the jury-room to deliberate on the issues.

Subsequently the jury returned into Court, and rendered their verdict, answering the several issues submitted to them, as follows:

To the first issue—No;

To the second—Yes;

To the third—Yes;

And to the fourth—Yes.

Mr. Pratt asked that the jury be polled, which is according to the practice, and each juror, when his name is called, responds to the verdict.

## DECREE OF JUDGE.

*In the Probate Court of the City and County of San Francisco, State of California.*

IN THE MATTER OF THE ESTATE

OF

HORACE HAWES, DECEASED.

Whereas, Albert Hart filed in this Court, on the 11th day of April, A. D. 1871, a document alleged by him to be, and purporting to be the last will and testimony of Horace Hawes, late of the City and County of San Francisco, State of California, deceased, accompanied with a petition in due form of law, asking that said document be admitted to Probate, as and for the last will and testament of said deceased.

And, whereas, in due time thereafter, and on the 9th day of May, A. D. 1871, Caroline Hawes, the surviving wife, and one of the heirs-at-law of said deceased, by her attorneys, J. C. Bates and W. H. L. Barnes, filed with the Clerk of this Court, a statement in writing of the grounds of her opposition to the Probate of said document as aforesaid, and at the same time, to-wit: May 9th 1871, duly filed her request in writing for a jury to try the issues joined by the filing of the grounds of her opposition, as aforesaid.

And, whereas, in due time thereafter, and on the 28th day of October, 1871, issues of fact were duly made up and settled by this Court, to be tried in the same manner as provided by law for the trial of issues of facts in other cases.

And, whereas, the trial of said issues so settled and made up, as aforesaid, was duly continued from time to time, until the 14th day of November, 1871, when the same came on to be tried, and it appearing that notice of the hearing of said application for probate of said alleged will of said deceased had been duly given according to the statute in such cases made and provided, and all parties interested in said estate or alleged will being duly represented by their respective counsel and attorneys, and it also appearing that said Horace Hawes died in said City and County, on the 12th day of March, 1871, and was a resident of said City and County at the time of his decease.

Thereupon the Court proceeded to summon and impanel a jury in the same manner as is provided by law for summoning and impaneling trial jurors in the County Courts of this State for the trial of civil actions, and on the 16th day of November, 1871, a jury of twelve persons, in all respects competent to try the issues raised, as aforesaid, were duly impaneled and sworn to try the same, and the trial thereof was had and conducted as in other civil cases from day to day, until the 2d day of December, 1871, to which day, said trial of said issues had been duly continued from time to time.

And, whereas, on such trial the following issues of fact were submitted and presented to said jury for their special verdict on each one thereof:

*First*—Was the said Horace Hawes, deceased, of sound and disposing mind at the time of the execution of such alleged will?



*Second*—Was the said alleged will signed by the Hawes, or by any person in his presence, and by his attestation?

*Third*—Was said alleged will signed by said Horace, attested, as required by law?

*Fourth*—If the said alleged will was signed by said Horace, did he sign the same freely, without restraint, undue influence, or fraudulent misrepresentation?

The jury after hearing all the evidence on the part of the contestant, argument of counsel and instructions from the Court, retired for deliberation.

And, whereas, the jury thereafter returned into Court their verdict upon each and every one of the issues of fact submitted to them, as follows: to the first issue, the answer "no;" to the second issue, the answer "yes;" to the third issue, the answer "yes;" to the fourth issue, the answer "yes."

It is therefore according to the facts so found, and the law so applied, the Court do hereby order, adjudge, decree and determine, that the instrument bearing date the 2d of March, A. D. 1871, and hereunto exhibited, and purporting to be the last will and testament of said Horace Hawes, deceased, is not his last will and testament, but is absolutely null and void, and of no force or effect whatever, and is not entitled to, or cannot be admitted to, probate as the last will and testament of said Horace Hawes, deceased.

SELDEN S. WRIGHT, P.

Filed, December 2d, 1871.

JOHN HANNA, Clerk.

By A. J. JEGHERS, De





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